PROCEEDINGS OF THE
FIRST INTERNATIONAL CONFERENCE
ON
CIVILIAN OVERSIGHT
OF
LAW ENFORCEMENT

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Edited by Stephen B. Ginsberg, former Director of Legal Services, Office of the Public Complaints Commissioner, Metropolitan Toronto

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PREFACE

Civilian oversight of law enforcement is coming of age. After what Ramsey Clark describes as "an early non-beginning" in the 1960's and after a period of retrenchment in the early 1970's, the last decade has seen the emergence of a new kind of alliance in police-community relations. Governments and police departments have become increasingly aware of and receptive to the very useful role that civilian oversight agencies can perform in the receipt, investigation and adjudication of complaints about law enforcement.

This tremendous growth of what has become a worldwide movement was visibly demonstrated in October, 1985, when 179 speakers and delegates gathered in Metropolitan Toronto to attend the first conference of the International Association for Civilian Oversight of Law Enforcement (IACOLE). Perhaps the most remarkable sight was the breadth of representation -- aside from Canada (nine Provinces represented) and the United States of America (16 States and the District of Columbia), people also came from Australia, England and Wales, Northern Ireland, Ireland, Nigeria, Trinidad and Tobago, Bermuda, Sweden and The Netherlands.

These edited proceedings contain virtually all of the information presented at the conference, with the exception of the workshop sessions. Some of the speakers presented written materials in addition to their speeches and in those cases I have combined the two. Although they were not among the speakers, both Sidney B. Linden, Q.C., the former Public Complaints Commissioner for Metropolitan Toronto, and Werner E. Petterson, of the United States Department of Justice, Community Relations Service, contributed major written papers to the conference. Mr. Linden's paper is reproduced in full in Part II, section A. Mr. Petterson's Compendium

of Civilian Oversight Agencies is substantially excerpted in Part IV, section F, for those agencies that were not represented by a speaker at the conference, and also in section H.

A great many people contributed to the success of the conference and most of them appear on the pages that follow. Two people who worked cheerfully and diligently behind the scenes were Alice Murray, who provided excellent assistance in co-ordinating the conference and Maureen Murphy, who skilfully created all of the conference materials and the many drafts of this book.

The entire civilian oversight community is grateful to Sidney B. Linden, Q.C., for his unique personal ability in attracting a truly international assemblage of speakers and delegates, Clare E. Lewis, Q.C., for his initiative in making these edited proceedings a reality, and the Government of Ontario, Ministry of the Attorney General, for its financial assistance.

Civilian oversight of law enforcement has taken on a new form. I hope that this will contribute to its growth.

Toronto, Ontario
August, 1986

Stephen B. Ginsberg

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PART I

OPENING ADDRESSES

I. OPENING ADDRESSES

A. The Honourable Ian Scott, Attorney General, Ontario

I take real pleasure today in welcoming the delegates to this international conference on civilian oversight. I am happy to see among the delegates, representatives of agencies from all over the world and to note in the agenda a number of distinguished speakers with extraordinary experience in this important aspect of the administration of justice.

As Attorney General of Ontario I bear the responsibility for justice policy, its development and application in the most heavily and diversely populated Province in our country. Among other responsibilities the administration of criminal justice in this Province is under my authority and so, along with my colleague, the Honourable Ken Keyes, the Solicitor General, who bears direct responsibility for police in the Province, I am acutely aware of the importance, in a very practical sense, of maintaining high standards of public service among our police forces.

The police bear, as you all know, awesome responsibilities within our justice system. To further these responsibilities society gives the police a significant measure of public respect and support and a large measure of discretion as to the manner in which they will fulfill their public duties. It thus follows that a misuse of power by a police officer is a breach of the trust the public has placed in that officer. Such a breach of trust, even from a single incident, can jeopardize the public credibility of all police officers.

Police management faces a challenge whenever a question of misconduct is raised. Public trust and confidence in the integrity of the police force will inevitably be damaged unless justice is not only done, to quote the old truism known to all of you, but seen to be done. This is so, particularly in regard to allegations of police misconduct and you are as aware, if not more aware than I am, of that salient fact. Investigations of misconduct, and discipline where misconduct is found, must be seen by the public to be prompt, impartial and, insofar as possible, certain. In no other way, in my opinion, can the public confidence in the integrity of its police force and the process be maintained.

Ontario has developed, I believe, an important mechanism to increase public confidence that complaints against police officers will be dealt with fairly and responsibly. Here, the Office of the Public Complaints Commissioner is an independent civilian agency that monitors and reviews the handling of complaints by the public against officers of the largest municipal police force in Canada. In the three years that the office operated as a pilot project, the system for dealing with complaints against Metropolitan Toronto Police Officers has undergone a considerable increase in openness and accountability. The operation of this civilian oversight agency has increased, I believe, the public's confidence in the police complaints system without loss of morale among members of our police force. The success of the office in Toronto as a pilot project led to its establishment as a permanent part of the administration of justice in the Province.

It is my belief, and my hope, that over time other municipalities will want to take advantage of this system. It's my view, as Attorney General, that the justice system can only profit from measures like civilian oversight, which

ultimately control the handling of police complaints, thereby increasing the accountability of the people that administer our justice system to the public served by that system.

I am sure you are all looking forward to proceeding with the business of this conference. I wish you well in your deliberations on a subject which is not only complex and difficult, but is of fundamental importance to the justice system. I look forward to meeting you all again in a more informal context tomorrow night at a reception at the legislative building. Thank you very much.

B. Paul Godfrey, former Chairman, Municipality of Metropolitan Toronto

A first conference of this kind is a very special one to me because in the next few minutes I would like to tell you what I think is really an incredible story. I have got to go back eleven years. I had been in my job as Chairman of Metropolitan Toronto for almost a year. I was a member of the Board of Commissioners of Police, and yes, I thought we had the best police force anywhere in the world. I still do today. And like a lot of politicians I was out giving a lot of pro-police speeches. I remember giving one and coming back to my office to the criticism of, as it happens to be, my executive assistant at the time, and to the man who is now, by coincidence, editor of the paper that I am the publisher of. The criticism was not so much being pro-police; the criticism was that there were some members of the public who honestly felt that their complaints were not being heard in an independent manner. Not that the final decision was wrong, but it was the process rather than the decision. After doing a little investigation myself, I could see the point of view that nobody bats 1,000, everyone makes errors and yes, you could have the best police force anywhere and yet you could be subject to some criticism if the public felt that their complaints were not being handled in a fair and even manner.

We had in place at the time a police complaints procedure which seemed to be operating quite efficiently, but the more I looked into it the more I came away with the thought that there were many people who were afraid of the system. Many people were reluctant to come forward. Many people honestly had the belief that even if they were right the decision that came out of that police procedure might leave a black mark against them.

Now, how do you change a system that had been in place for a number of years with an institution that politically was viewed as being superb? The majority of the public felt that the police were doing a great job. The Board of Commissioners felt that they were carrying out their responsibilities in just a first rate manner. And yet there was the feeling that it was now the time to move on to the next step. We knew that there were people on the political right who said don't tamper with the system - if it is not broken why fix it. There were people on the extreme left who said, quite openly, that the police should not investigate themselves at all. They should play no role in it. What you need is a complete civilian investigation with no input from the police whatsoever.

It took time to bring about change. I sought out the services of the late Arthur Maloney, a great lawyer in this country. I tracked him down, I remember, in Edinburgh, Scotland. I said to him, "I have got a job for you to do, to review the entire police complaints procedure". It took two years to do that job and I thought that after two years we would get the report, that it would be a document that would be acceptable to all and would be implemented within weeks. Well the document was a great one. The document is one that pretty closely parallels what we have in place at the present time.

That was in 1976 and it was just the beginning of the struggle. There was great reluctance from the Police Association, the union of police officers, saying there was no need for change. Some of my political colleagues went the other way and said the document didn't go far enough. Then we had to convince legislators at Queen's Park. Everybody had an opinion on it and everybody's opinion was slightly different. It seemed to me that after two years

and this master plan in front of us that surely we would be able to put something into place. Other police forces around Ontario were reluctant to see it take place in Toronto because they thought this was the thin edge of the wedge - get a foothold in there and suddenly they would lose total control. Yes, I heard the stories about the morale of police officers disappearing and I spoke to a number of police officers who told me that this would be the end of my political career. I also heard from others who said the exact opposite. They agreed that it would be the end of my political career, but they said that it didn't go far enough. I can tell you that it was possibly the most touchy issue that I ever faced--trying to balance the system in which you can be totally fair to the public that you represent and, on the other hand, fair to a system that has worked extremely well over the years, been right most of the time and protected the public most of the time.

That is where Sidney Linden came into the scene and through a series of meetings, encouraged by the former Attorney General of this Province, we were able to bring groups together. We were able to bring senior management of the police force and the Police Association into discussions with various ethnic groups in this community. And we talked. We didn't always agree. We tried to seek compromise. We tried to seek understanding. We tried to seek out a level of tolerance on both sides. Finally, in the early eighties, it became apparent, after a number of incidents in the community where the public and the police came into violent contact with each other, that the Provincial legislators were ready to move.

When you reflect back now and speak to members of the Police Association they view it as a safety valve for themselves because they immediately shed the dark cloud that

comes over them when people say, "Oh yeah, but you guys are just investigating yourselves." They also have protection because police input is built into the system. The public, I think, today will agree that, yes, we have found the tender balance in this community.

I can tell you, as a newspaper publisher and someone who has stepped out of the political arena, that bad news sells newspapers. I watch and I read and I look for the conflicts that may take place in this community. I am pleased to say that the safety valve in place at the present time works.

When there is heat generated in any community, when any two people come into contact with each other, whether it be police against the community, or whether it be two individuals, you need a cooling off process. And the cooling off process in Toronto is the Public Complaints Commissioner. It works here. It can work in other communities.

Torontonians are delighted in having you people from all over the world here in this community. We can learn from each other. We can build together. It is a difficult task. The tightrope that you walk is often fraught with difficulty as people try to push you off. Good luck in your deliberations. Thank you.

PART II

MAJOR SPEECHES AND PAPERS

II. MAJOR SPEECHES AND PAPERS

A. Sidney B. Linden, Q.C., Public Complaints Commissioner, Metropolitan Toronto

1. THE CREATION OF A CIVILIAN REVIEW SYSTEM FOR POLICE COMPLAINTS

(a) The Genesis of the Legislation

Legislation, particularly that perceived as "reform" legislation, is often the product first of history and secondly of compromise. A capsule description of the legislative process can be stated as follows:

(i) events give rise to a public perception of need; and

(ii) a legislative scheme is eventually developed after research and consultation with affected parties.

In this paper, I propose to outline some of the background which led to the legislation which created the Office of the Public Complaints Commissioner. I will briefly describe some of the research and negotiation that preceded the passing of the legislation. Obviously, many of the details will be omitted, but I hope that I can convey some idea of the complexity of the problems. A recognition of this complexity is essential to understanding the issues that underlie the structure and function of a system of civilian review of police complaints.

Complaints about police have always been a part of the justice system. However, in the late 1960's and early 1970's individual allegations of misconduct began to give way to expressions of public concern about the effectiveness and perceived fairness of procedures for citizen complaints against police in various jurisdictions in Ontario. Although

well-publicized situations aroused public debate in areas such as Kitchener, St. Catharines and Tillsonburg, it was predictably within the boundaries of the Municipality of Metropolitan Toronto, an aggregate of several Boroughs and Cities with a population of 2.3 million and a 5,300 officer police force, that public debate was the most frequent and wide ranging. Expressions of concern centred around the closed nature of the internal system for handling complaints and allegations of police cover-up of misconduct. Germane to this issue was the lack of documentation concerning complaints, lack of information about both the investigation of complaints and disciplinary action that may have been taken, and perceptions that the police attitude toward complaints was characterized by general disavowals of wrongdoing and over-protectiveness.

In 1974, after a series of highly publicized complaints involving the actions and activities of officers of the Metropolitan Toronto Police Force, the late Arthur Maloney, Q.C., was appointed by Metropolitan Toronto to study police complaints procedures. In his well documented report Mr. Maloney recommended, among other initiatives, the appointment of an independent civilian Commissioner of Complaints.

In 1976, again after considerable pressure from the public and the media, the Ontario Government appointed Mr. Justice Donald Morand to head a Royal Commission into Metropolitan Toronto Police Practices. The Commissioner also called upon the Province to set up an independent civilian review agency, as had been recommended in the Maloney Report.

In 1976, Judge Rene Marin also conducted a study of police complaint procedures as they related to the Royal

Canadian Mounted Police. His Honour Judge Marin's recommendations were in many ways similar to Mr. Maloney's. He recommended that there should be a civilian component in the complaints handling process.

In 1977, because of increasing concern in the area of race relations by governmental organizations and visible minority groups, particularly as it related to policing in Metropolitan Toronto, the Council of the Municipality of Metropolitan Toronto appointed Walter Pitman, formerly the Deputy Leader of the New Democratic Party in Ontario, to conduct a study of race relations. Again, this report strongly urged the Province to carry out the recommendations contained in the Maloney and Morand Reports as soon as possible, because of the eroding confidence of visible minority communities with established authorities.

Also, in that year, the then Solicitor General, John MacBeth, introduced a Bill which attempted to legislate civilian involvement in the police complaints procedure. This Bill, which advocated a Province-wide complaint system with a civilian component, came under attack from both police and community spokespersons. The Bill was not pursued in the legislature and died on the order paper.

In 1978, the Solicitor General requested the Ontario Police Commission to contact Ontario police forces with a view to revising procedures for dealing with public complaints against police. A suggested procedure was worked out in consultation with police forces and many local boards of commissioners of police adopted the procedure, or much of it, by by-law. This by-law, which is quite comprehensive, currently governs the procedure in most communities in the Province outside of Metropolitan Toronto. The Ontario Police Commission also produced a small pamphlet on the subject of complaints against the police, for distribution to the public.

These initiatives did not satisfy the growing concern of some segments of the community in Metropolitan Toronto. In June 1979, the Honourable R. Roy McMurtry, who at that time was both Attorney General and Solicitor General of Ontario, appointed me as his special counsel to study possible methods of injecting a civilian component into the handling of police complaints. Prior to that, I had been practising law in the City of Toronto since 1966. My experience was predominantly at the criminal defence bar and as a labour arbitrator. I immediately began to study and in some cases visit other jurisdictions. I also reviewed the world-wide literature on the subject, including the reports already referred to.

In 1979, while I was still conducting my research, the Roman Catholic Cardinal Emmett Carter of Toronto, was asked by Metropolitan Toronto Council to help ease growing tension in police-visible minority relations. The Cardinal's report to Council, dated October 1979, recommended that a civilian component be introduced into the police complaints procedure and he also noted, with approval, many of the proposals and suggestions that had been contained in the earlier reports, including the Maloney and Morand Reports.

Also in 1979, the Mayors of the boroughs and cities of Metropolitan Toronto and the Metropolitan Toronto Chairman, met with the Attorney General/Solicitor General about their growing concern regarding deteriorating police-community relations. The Mayors requested that the Provincial government appoint a civilian Commissioner and establish a system to deal with police complaints as soon as possible. Accordingly, it was decided that legislation should immediately be drafted to establish an independent review of police complaints for Metropolitan Toronto as a pilot project. The first draft of the legislation, which was

introduced in December 1979, failed to win the support of the Legislature. In 1981, a somewhat modified version of the legislation was re-introduced, and submitted to clause by clause analysis by the Justice Committee. The legislation, which officially established the Office of the Public Complaints Commissioner as a three-year pilot project to deal with complaints about Metropolitan Toronto police officers, was officially proclaimed in force on December 21, 1981. I was appointed by Cabinet Order-in-Council as the first Public Complaints Commissioner.

(b) Research and Negotiation

The brief history set out above, with its numerous studies and short-lived Bills, gives some indication of the controversial nature of the proposed legislation. Events between 1978 and 1981 indicated that a considerable segment of the public was dissatisfied with the existing system of handling complaints. Equally, some police officers were dissatisfied with the complaints system. To be sure there was also a large proportion of the police force that was opposed to participation by civilians in any aspect of the complaints system and others who were concerned about any measure that might have the effect of lowering the morale of the police force.

In my preliminary research of other jurisdictions' police complaints systems I discovered that strong feelings on the part of the public and the police were the rule in this area. Accordingly it was my view that, in order to be successful any system, regardless of the legislation or by-law creating it, must of necessity be the product of compromise.

In designing the system, a threshold issue which had to be addressed was whether police, civilians or a combination of the two should conduct investigations into police complaints. My research into the structure and function of the police complaints systems throughout North America, Great Britain and other countries had shown that a system has rarely, if ever, been successful if the opportunity to respond to complaints was completely removed from the police force.

I also noted that none of the research reports done in Canada or elsewhere had recommended excluding the police force from the process. They had merely recommended adding a civilian component to the process. Indeed, both the Maloney and the Morand reports recommended that police officers should continue to be involved in the investigative stage. As Mr. Maloney put it:

> "Accordingly, I have come to the conclusion that the Investigative Branch should be manned exclusively by trained police personnel. They are eminently qualified to undertake this sort of responsibility. They are more likely to have ready access to police files and police information that would be made available to non-police personnel. I am confident, too, of their ability to be fair and objective".

I also learned that experience in cities such as Philadelphia had shown that an attempt to inject a civilian component in the police complaints process led to confrontation with the police force. The police force, in turn, mobilized public opinion in its favour, with the result that the system was eventually overturned. The city of New York underwent a similar experience during the period when John Lindsay was Mayor in the late 1960's and early 1970's. In that City a public referendum was held, which resulted in the defeat of the civilian review system.

Although the literature may suggest otherwise, the facts as I found them indicated that jurisdictions which allowed for exclusive civilian investigation of police complaints were virtually non-existent. To be clear, several jurisdictions had injected a civilian component, but where there was civilian participation in initial investigation, there was always some effort made to balance the system in a number of ways.

In the period before 1981, I was unable to locate a single jurisdiction that gave independent civilian investigators broad powers (such as the right to subpoena witnesses and to obtain search warrants) and at the same time excluded police involvement. Whenever I did find civilian involvement at the investigatory stage there was usually also police involvement in a parallel investigation. Typically, systems with civilian investigation either had no statutory power to subpoena police officers who chose not to cooperate or the civilian investigators were ultimately accountable to the Chief of Police. Furthermore, systems that had some form of civilian investigation at the front end did not place power in the hands of civilians at the back end of the system, when a disciplinary decision was to be made. Where civilian investigation at the outset was a part of the system, the process simply allowed a civilian Commissioner or civilian Board to make a <u>recommendation</u> regarding disciplinary action to the Chief of Police, Mayor or City Manager. Whether disciplinary action would actually be taken, or what disciplinary action, was left solely to the discretion of that official. [In 1984, legislation passed in the Province of Manitoba set up a complaints system that does combine many of the above-noted features: see <u>The Law Enforcement Review Act, 1984</u>, Statutes of Manitoba, Chapter 21.]

With these considerations in mind, the model I recommended for injecting civilian participation into the complaints process in Metropolitan Toronto was essentially a balancing act. It consisted of a civilian review agency with broad powers to do initial investigation in some cases, and re-investigation in others, coupled with a civilian adjudicative body which could impose discipline directly, and to which the review agency could refer cases for public hearings.

The Metropolitan Toronto Police Force Complaints Project Act, 1981, established the Office of the Public Complaints Commissioner as a three-year pilot project. The basic scheme of the Act was that the office would: 1) monitor the handling of complaints by the police, 2) perform initial investigation in unusual circumstances, 3) conduct a review where the complainant was dissatisfied with action taken by the police force, 4) where the Commissioner disagreed with the response of the Chief of Police, refer cases to a civilian adjudication tribunal that had the power to impose disciplinary penalties directly, and, 5) perform a preventative function by making recommendations to the Chief of Police, the Board of Commissioners of Police, the Attorney General and Solicitor General in regard to general policing issues arising out of complaints. The fact that the legislation initially established a three-year pilot project was an acknowledgement that new ground was being broken and that trial and experimentation was to be the order of the day.

It is also important to acknowledge and emphasize the importance of cooperation. If either the police force or the Commissioner's office had taken a rigid, inflexible view of the legislation, litigation would have been commonplace and the system would not have succeeded to the extent that it has. We were fortunate to have been able to proceed in a

spirit of mutual co-operation where all parties possessed a desire to ensure the proper functioning of the system.

(c) The Creation of a Functioning System - Initial Changes

The legislation only created the "bare bones" of the complaint system. Our first important task was to develop rules and procedures which could be incorporated into Regulations, as well as general guidelines for the administration of the system in accordance with the principles of the Act. Another important task in the setting-up stage was to discuss with the police force the necessary changes to their investigative process.

Prior to 1981, the complaint system for the Metropolitan Toronto Police Force was the predominantly internal system that is used throughout Ontario. There was little in the way of public documentation or public accountability. Further, there were publicly-voiced concerns from people who complained that their complaints were simply being "swept under the rug" and that the entire matter had been dealt with over the telephone, with unsatisfactory results. Defense counsel spoke of their clients being concerned that a complaint of excessive force in their arrest might result in repercussions relating to the processing of outstanding charges, and that complainants were coming under pressure from police officers to discontinue their complaints.

Complainants were not the only ones unhappy with the system. Police officers also complained about the existing complaints system, citing a lack of any written reasons to be sure that unsubstantiated complaints would not subsequently be used on personnel records.

In my initial review of the existing complaints system, I realized that there was a relatively small unit of the police force which dealt with some 800 complaints a year. Again, in my view, this unit was largely underfunded in terms of support services. The offices were cramped and the staff overworked. Only minimal documentation was kept, and statistics on complaints tended to be brief or incomplete. Informal resolutions or withdrawals of complaints, with virtually no documentation, was estimated by the Superintendent who testified at the Justice Committee hearings to be in the order of approximately 90% of all complaints.

Investigation and disposition of complaints by the police involved many shortcuts that one could expect from a small and overworked staff. Personal interviews with affected officers were rarely held, there were no formal lines of communication with officers' supervisors about complaints, and there was little use of investigative techniques such as photography, lab reports and the like. The Superintendent assigned by the Chief of Police to make final dispositions on complaints received a file that contained a summary of the complaint, a record of complainant's criminal record, if any, and the police investigator's opinion as to whether the complaint could be supported or was unsubstantiated. Often communication with the complainant was by telephone. If it was in writing, the letter to the complainant generally contained little, other than the finding as to whether the complaint was substantiated or not. On advice from legal counsel, concerned about a possible civil suit, these letters generally contained little or no information. Complainants were often left frustrated with the system as much as with the result.

The new legislative scheme required that major alterations to the existing complaints procedure be made with two major purposes in mind. First, the system must be much more open. It was acknowledged that the public had an interest in seeing a process of accountability in regard to allegations of police misconduct. Much more information was needed and the process should be seen to be thorough and objective. Secondly, management of the police force could be greatly assisted by information gained by the complaints process. With these purposes in mind, I approached senior police management to discuss proposed changes. A general investigative procedure was agreed upon and encoded in the Regulations. This procedure, together with other issues that arose at that time and which were discussed with the police force are outlined as follows:

(i) Receipt of Complaints

According to the terms of the new Act, a person could lodge a complaint directly with the Office of the Public Complaints Commissioner, at any police station, or at the Office of the Public Complaints Investigation Bureau of the police force. The Act stated that when a complaint was made, the complaint must be written on a complaint form, copies of which were sequentially numbered, so that any loss of a form must be accounted for. Regardless of where the complaint was lodged, copies were forwarded immediately to both the Commissioner and the police. The complainant was also given a written statement which briefly described the steps in the complaint process.

On issue that arose in regard to the receipt of complaints was refusal by some officers in charge of stations to accept or record complaints. This was discussed with the police force so that officers became aware that

refusal to accept or record a complaint could be included as a complaint against the officer who failed to accept the complaint.

Another issue was the practical consideration that, where a complaint is made at a police division about an officer employed at that division, evidence might be available on the spot at the time the complaint is lodged. The issue was difficult to resolve, but eventually a provision requiring the officer in charge of the station to initiate an investigation and secure any necessary evidence was made a part of the system. [Metropolitan Toronto Police Force Complaints Act, 1984, s.6(3)].

Another issue was the chronological point at which settlement or informal resolution of a complaint should be attempted. I was of the view that a complaint should be recorded and entered into the system even if the officer in charge of the station thought that he or she could resolve it quickly. If a complaint were resolved without being documented, statistics which might be useful to both the public and the police force could be lost. Other reasons for making all complaints a matter of record are that the number of complaints against a particular officer in any one period of time should be of concern to management, and that an appropriate resolution of a complaint should be available for future reference.

A final point in regard to the receipt of complaints concerned the Public Mischief charge. In a widely used pamphlet advising the public about the complaints system, many police forces, including Metro, had made a point of warning a potential complainant that he or she may be charged under the Public Mischief section of the Criminal Code, if appropriate.

The Public Mischief warning, and the perception that these charges were being laid more frequently than they were, was a significant factor regarding the public's trust in the police complaints system. I was concerned that warnings about public mischief charges could deter legitimate complaints from being filed. After discussing this issue it was agreed that such warnings would not be routinely given in Metro Toronto.

(ii) Investigation of Complaints

The new legislation provided that, in most instances, investigation would initially be done by the Public Complaints Investigation Bureau of the police force, which is a specialized unit within the force that deals exclusively with citizens' complaints against police officers. If an investigation lasted longer than 30 days, the complainant, the police officer concerned and the Public Complaints Commissioner received a written report of the investigation every 30 days. When the investigation was completed, a final report detailing the results of the investigation was sent to the complainant, the police officer and the Public Complaints Commissioner.

Upon receipt of a copy of the final investigation report, the Act allowed the Commissioner to request the Chief of Police to conduct further investigation into the complaint.

From the beginning of the pilot project there had been considerable discussion between the Bureau staff and our office as to the way in which investigations were to be conducted. In my view, this continual dialogue was critical for a successful police complaints system. While completely separate and at arm's length with each other, the two

offices must be prepared to discuss difficult and unforseen situations as they arise. This approach has resulted in a healthy degree of mutual respect which exists between the Bureau office and ours.

One interesting issue was whether the investigation of a complaint against a police officer should be delayed where criminal charges were outstanding and pending either against the complainant or against the police officer. Prior to the passage of the Act the practice of the Bureau was to suspend investigations of complaints in these curcumstances. After discussion with the Bureau, police management, and the Director of Crown Attorneys for the Province of Ontario, some general rules were agreed upon. Accordingly, the Director of Crown Attorneys, in a memo to Crown Attorneys in the Metropolitan area, advised them that, as a general rule, they should not request police officers carrying out complaints investigations to defer the investigation until the conclusion of a criminal investigation or trial. Exceptions to this general rule could of course be made where peculiar circumstances relevant to a complaint could seriously jeopardize a criminal investigation or trial, but there was an understanding that a police complaints investigation should not automatically be suspended simply because of an outstanding criminal or civil matter.

Another issue concerned the development of a separation between investigation and the decision-making function of the Chief of Police. Prior to the enactment of the legislation, a Bureau investigator's opinion as to whether or not a complaint was "substantiated" generally accompanied the file, to be seen by the Superintendent (as designated by the Chief of Police) who ultimately disposed of the complaint. I suggested that this practice be discontinued as there should be, and be seen to be, a clear line of

demarcation between the investigation and the adjudication of a complaint. Accordingly, it was agreed that there would be a separation of function within the police force. One Deputy Chief was designated to be responsible for the investigative unit and a different Deputy Chief was designated as responsible for the decision which was made after the investigation was concluded.

(iii) Informal Resolution of Complaints

The legislation provided that a complaint might be resolved informally by the police during the course of, or prior to, a formal investigation. In the previous system no record of informal resolutions was kept. I was of the view that a record of informal resolutions was essential for a number of reasons. First of all, much useful information for the management of the force can be obtained from a record of informal resolution. (An obvious example is a complaint of inadequate or slow response to a call for help in a particular part of the city). Secondly, a properly resolved complaint is a credit to the force's ability to effectively respond to a concern expressed by a member of the public, and as such, should be noted. Thirdly, regardless of the ultimate disposition of the complaint, the fact that an unusual number of complaints are made in a particular period against one officer may alert the force to a personal problem or a need for additional or special training on the part of that officer. Fourthly, an informal resolution that is obtained inappropriately is no real resolution at all, and a written record helps prevent this type of problem from occurring. Accordingly, we devised a form for recording informal resolutions. On the form, the Bureau officer must outline the nature of the complaint, the steps taken to resolve it, any comments by the complainant or subject officer, and the manner in which the complaint

was resolved. The form is required to be signed by both the complainant and subject officer. The informal resolution form is then forwarded to our office as well as to the complainant and the subject officer. The system provides a valuable civilian component to the process. If I as Commissioner determine that an informmal resolution has been obtained by duress or other improper means I can re-open the matter and cause a formal investigation to be conducted.

(iv) Withdrawal of Complaints

For the reasons noted above in respect of informal resolutions, complaint withdrawals are also documented. A form has been drafted on which a withdrawal is recorded together with the reasons for the withdrawal. Similar to the situation involving informal resolutions, if the withdrawal has been obtained pursuant to duress or other improper means it can be continued and a full investigation conducted.

(v) Disposition by Chief of Police

The final step of the police force's responsibility in the handling of complaints is the disposition of the complaint by the Chief of Police through a Deputy Chief to whom this responsibility has been delegated. Previous to the enactment of the legislation, the decision made on behalf of the force was not always communicated to the complainant in writing and, if the decision was made in writing, reasons were not always given. Under the new legislation, the Chief has been given the responsibility to give both the decision and the reasons therefor in writing, with a copy to the complainant, the subject officer and to our office.

An issue that arose in reference to the Chief of Police's decision letter was whether the complainant ought to be notified that he or she had a right to a review of that decision. I discussed this matter with the Chief of Police, who agreed that his letter should include a standard paragraph stating that if the complainant is not satisfied with the decision, he or she has the right to a review by the Public Complaints Commissioner. That is the standard procedure at this time.

As can be seen from the above discussion, the new system has opened up the complaints process. Written reports are prepared and distributed regularly to all parties. As a result, everyone is kept abreast of the investigation as it is being developed. The Chief's decision is then based on evidence that everyone is aware of. Furthermore, the fact that a dissatisfied complainant has the right to request a review is clearly communicated to him or her. Collectively, these reforms, which have taken time to be completely incorporated and integrated into the system, have had a profound effect on the system for handling police complaints.

2. OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER: STRUCTURE AND FUNCTION

(a) Staffing - Responsibilities of the P.C.C.

(i) Obtaining Skilled Investigators

Acquiring competent civilian investigators was a top priority. A perennial question arising in the literature on civilian intervention in police complaints is whether civilian investigators can investigate as competently as the police. Our experience has been that there is no insurmountable difficulty in building a very competent civilian investigative staff. The first investigators that were hired did have previous police experience. However, these investigators had ceased to be employed on any police force some years prior to their commencement at the P.C.C. I felt that it was unwise to hire investigators directly from the police force and that a hiatus of some years was necessary in order to ensure objectivity. Previous job experience among investigators included private security work, research, law, and investigation for the office of the Provincial Ombudsman. Through a combination of previous job experience and on-going in service training, a high level of competence in investigation has been built and maintained.

Along with investigative skills, a competent investigator requires empathy, tact and the ability to communicate well. The "intake" function, in which the details of a complaint are reduced to writing, can be difficult and time-consuming. While some complainants come to the office in a timely fashion, with precise details in writing and a clear recollection of the facts, others do not. Investigators deal with many complainants who complain some time after the event. Investigators also interview people who

may be inarticulate, who lack English language skills, or who are emotionally overwrought. Interviews with police officers involved in complaints can also be difficult, particularly if the officer is upset or indignant.

The skilled investigator must be prepared for a job that cannot be done entirely within standard office hours. Investigators frequently have to accommodate themselves to the shifts that a police officer may be working, as well as meeting complainants before or after working hours. It is frequently necessary for investigators to travel to the complainant or to the police officer in order to obtain information.

Finally, the investigator must be able to produce a coherent, written report of the facts found, so that the Commissioner may reach a decision on the file. This often requires an appreciation of legal issues which necessitates either qualification in law for investigators, or an ability to work with legal staff.

(ii) Legal Staff

A competent legal staff is vital to the functioning of the complaint system. Ideally, legal staff should be well-versed in specific substantive areas of law and also have a broad knowledge of the justice system. A sound grounding in the principles of justice is essential, because legal norms are the source and measure of all activity undertaken by administrative agencies such as the Office of the Public Complaints Commissioner. Certain substantive areas of law are also relevant: among them criminal law, administrative law, labour law and civil law. Legal expertise, in sum, is essential not only to address questions such as whether an arrest that resulted in a complaint was legal, but also to

research and address broad policy issues, which may result in recommendations for change, and to ensure that the overall functioning of the process, from complaint intake to tribunal hearing, is in accordance with the principles of the justice system.

(iii) Research and Statistics Capability

A final and very important feature of the monitoring and review process is the need for a sophisticated statistics system. Statistics about police complaints allow the review agency to gain an insight into a variety of issues, such as the number and type of complaints filed annually, the way in which they are resolved and the disciplinary action taken by the police force. This enables the agency to observe trends and patterns which over a period of time will assist in enabling the agency to make valuable recommendations for improvement or reform.

(b) Statutory Responsibilities

The statutory responsibilities of the Office of the Public Complaints Commissioner under the legislation are as follows:

(i) Receipt of Complaints

Members of the public have the right to lodge a complaint against an officer of the Metropolitan Toronto Police Force directly with the Office of the Public Complaints Commissioner. Thus, the office must have the capacity to take statements from complainants and conduct preliminary investigation such as securing physical evidence and taking photographs.

(ii) Conducting Investigations

On occasions as set out in the Act, the Commissioner is empowered to undertake an investigation from the beginning, and report the findings on the investigation directly to the Chief of Police. In all cases the Commissioner may conduct his own investigation 30 days after the complaint is filed. Thus, the office must have a skilled investigative staff.

(iii) Monitoring the Handling of Complaints by the Police

To be effective, the monitoring function must include reading all complaints, reviewing all investigative reports submitted by the Bureau, keeping in close touch with the Bureau so that any questions that arise in regard to complaint files can be addressed during the course of the investigation, and communicating as needed with the complainant. In addition, the monitoring function involves reading all dispositions of complaints by the Chief of Police. Accordingly, legal, as well as investigative staff are required for this purpose.

(iv) Review Process

The legislation gives the complainant the right to a review by the Commissioner. This review might involve considerable re-investigation. After review, the Commissioner is obliged to make a decision as to whether it would be in the public interest to hold a public hearing into the complaint. If so, he is empowered to refer the case for a hearing before an independent civilian administrative tribunal. If no hearing is ordered, the Commissioner must give written reasons for his decision. Where appropriate, these reasons might also include recommendations as to changes in police pratices or procedures.

At the outset, fitting the staffing, structure and administrative functioning of our new agency to the task outlined above was a challenging exercise. The controversial nature of the legislation made it imperative that the staff and structure of the agency be such that credibility with both the police force and the community could be built and maintained. Therefore, the choice of staff was extremely important.

(c) Some Illustrations

A description of the system for which investigative, legal, and research/statistics expertise is applied to specific complaint files may be appropriate here to illustrate the interaction of the personnel described above.

Whether the complaint is filed at the Office of the Public Complaints Commissioner, at a police station or at the Police Complaints Investigation Bureau of the police force, a copy of the complaint is sent to our office, where a file is opened for each complaint. All complaints are read by both investigators and staff lawyers. Complaint files are then assigned by the Director of Investigations to individual investigators who read the interim monthly reports of the investigation as they are prepared and sent to our office by the Public Complaints Investigation Bureau. Any issues arising from the investigation reports are discussed by the investigators with the Director of Investigations, who brings any problems to the attention of the Commissioner. If a problem warrants intervention, either the Director or the Commissioner will contact the Staff Inspector in charge of the Bureau and discuss the matter. In cases of serious problems, the Commissioner may decide to take the matter up with the Chief of Police directly.

A complaint may be resolved by written withdrawal, a written informal resolution or a letter in which the Chief of Police decides what action, if any, is appropriate. These documents are reviewed by the Director of Investigations. The file is then forwarded to the Director of Legal Services for his consideration. Again, any problems or concerns will be taken up with the Bureau and serious matters will be discussed by the Commissioner with the Chief of Police. If there is no request for review, the file is sent to our Researcher for closure. At that time, a complaint recording form, which is designed to obtain over one hundred pieces of information from each complaint file, is prepared. The collection of this information is directed towards two objectives: 1) improving methods of processing public complaints against the police and 2) identifying patterns or trends with a view to being able to assist the management of the police force in taking preventative action. An annual statistical report is compiled from cases closed within the year.

On occasion, our office undertakes investigation prior to completion by the Bureau. In these cases there is no monitoring function unless the Bureau is also involved with part of the investigation. Otherwise, the process is substantially the same.

When a review is requested by a complainant, the Director of Investigations informs the Bureau of the request and obtains a copy of the investigation file compiled by the officer who originally investigated the complaint. The Director of Investigations then forwards the file to the Commissioner for his initial comments. The file is then assigned to an investigator, who will review the police investigation, including statements, photographs, etc. In most cases our civilian investigator will re-interview the

subject officer, the complainant, and any witnesses as well as do any additional investigation or re-investigation that he deems necessary. Review files, appearing to the Director of Investigations to have a significant legal problem, are assigned to an investigator who has legal training. Legal questions that may come up in the course of a review are raised with legally trained staff by the investigator in charge of the review.

If it appears to the investigator and to the Director of Investigations that a public hearing is likely to be necessary with respect to a particular review file, a case conference is called as soon as all necessary information has been obtained. The case conference is attended by the investigator on the case, the Director of Legal Services, the Director of Investigations and the Commissioner. The case is discussed at length and analysed in detail. If the Commissioner decides that it is in the public interest to order a hearing, the matter is referred to the Director of Legal Services for preparation of the initial documentation. At this time all the administrative aspects of the hearing are arranged by the Registrar to the Board. These include such matters as estimated length of time to hold the hearing, arranging for hearing dates and a hearing room.

In any review file for which a public hearing is <u>not</u> ordered, the investigator will draft a review report detailing the investigative steps taken and the findings in the case. This is forwarded to the Commissioner for his consideration and revision, if necessary, before sending it to the complainant, the subject officer and the Chief of Police.

After a review report is sent out or a public hearing has been completed, the case is considered closed and

information from the file is recorded by the Researcher for research and statistical purposes as described above.

(d) Police-Community Relations

An administrative imperative that is important to all administrative agencies but which is particularly important to a police complaints agency is the need to make special efforts to keep in close contact with both the regulated body (the police) and the general public.

Community standards, or what the public expects from its police force, must be kept firmly in mind by the Commissioner at all times in administering the Act. Accordingly, a deliberate programme of public outreach must be maintained by the office, with a view to both educating the public about their rights and responsibilities under the Act and at the same time hearing public views on relevant issues.

The building of working relationships with the Chief of Police, senior management of the force and the Board of Commissioners of Police is another essential. For the system to work smoothly, it is crucial that the Chief of Police understand the function of the system and its potential use for management. In addition, there is a continuous need to consult with the Chief on matters as diverse as an investigative "snag" arising in a particular case, or the implementation of a recommendation for a change in police procedure. A healthy working relationship with the Board of Commissioners of Police is equally vital.

An issue often ignored in the literature is the relationship which exists between the complaint agency and the Police Association. Often the public perception of the "police force" as a "monolithic entity" fails to take into

account the differences of opinion that exist between police management (the Board of Commissioners of Police) and the union (the Police Association). This is particularly true in the area of discipline. A complaint agency must be conscious of these differences. To be successful, a complaint agency must be viewed by police management and the public as useful and effective, while at the same time ensuring that the rights of individual police officers are scrupulously protected. This may be difficult, but neglecting to consider and protect the rights of individual police officers will probably result in withdrawal of support by the Police Association. While it may be possible to function without this support it will be infinitely more difficult. When the Metropolitan Police Force Complaints Project Act was first introduced a Bill of Rights for police officers was produced at the same time. This Bill of Rights codified in written form how the system was expected to operate and how individual rights were to be protected.

A complaint agency must also establish contacts and regular channels of communication with many diverse groups and agencies in the community. For example, relationships with the Ontario Police Commission, the Ontario Human Rights Commission, the Race Relations Division and the Ombudsman are very important. In addition, there are several Mayor's committees which are concerned with race relations and policing. Members of our staff participate in these committees and act as a resource. There are also many community and volunteer groups that are concerned with the issue of policing in their community. It is important that the Office of the Public Complaints Commissioner be a visible presence and readily accessible to all of these groups. The Commissioner has served on the Council on Race Relations and Policing for Metropolitan Toronto since its inception. This Council is made up of many different groups from the community, including the police.

In addition, our office has established contacts with similar agencies throughout Ontario, Canada and worldwide. These worldwide contacts are very important. They have enabled us to participate in the International Association for Civilian Oversight of Law Enforcement (IACOLE) and to assist in the organization of this conference. There is no doubt that conferences such as this, where information and ideas may be freely exchanged, are extremely valuable. While we may develop different solutions or approaches depending on our own jurisdiction's uniqueness, the problems that we are confronted with are substantially the same. This opportunity to share information and experiences will help us to do our own jobs that much better. It is also comforting to know that there are other agencies in the world facing the same insoluble problems as we are. Indeed, the "problem" of police complaints is not a 'problem' in the conventional sense that has a "solution". It is a "continuing process" and all of us, police and civilian alike, must be eternally vigilant to ensure that the delicate balances of our democratic society are maintained.

B. George Masterman, Ombudsman, New South Wales, Australia

1. Introduction

I am not really sure at 12 midnight Sydney time, and after a twenty hour flight, what I'm am doing here or what I'm supposed to be doing here. In another sense I do know why I'm here, and at the risk of joining the Sidney Linden admiration society, the reason I am here is because of my respect for Sidney, and for the Toronto Public Commissioner's system, which in my view, is easily the best system in the world. If I can give that a sharper edge, I believe that there are a number of civilian agencies and Complaint Boards posing as such, which do not bring to the system the impartiality, the seen impartiality, as Attorney General Ian Scott mentioned this morning. There is no doubt whatsoever that the Toronto system brings both investigative skills, integrity and credibility to the system of civilian investigation of police complaints.

The words "Keynote Address" conjure up an impression of deep thought and weighty consideration of basic philosophies.

While I have some knowledge of relevant literature in the area that is the subject of this conference, I do not propose to quote or discuss it - partly because it is unnecessary and partly because there are others here far better qualified to do so. I will content myself with some rather self-evident initial comments.

In an ideal society there would be no need for civilian oversight of any police force. Indeed, in such a society it could be said there would be no need for a police force! Self regulation, I believe, is clearly preferable to

scrutiny by an outside body. But the further any society and its police force is from the ideal, the greater the need for outside regulation and vigorous investigation by outsiders.

In Australia the case for civilian oversight no longer has to be argued. Between 1978 and the present, both Commonwealth (or Federal) and State governments have introduced differing forms of civilian oversight of their respective police forces. There are no city police forces as in North America. Two of our newest varieties of civilian oversighters have travelled vast distances to be here at this conference. Eric Freeman, the very able Western Australian Commissioner of Administrative Investigations (or Ombudsman) who has been entrusted with powers over police from 1st July this year and Andrew Cunningham, whom I have not yet met, who constitutes the recently formed South Australian Police Complaints Authority.

By common agreement the Australian State, whose police force most needs both reform from within and independent investigation from outside, is the most populous and first settled state of New South Wales. A recent judicial enquiry into the police of the State of Victoria found that police in New South Wales are considered by citizens to be less honest and to abide by lower ethical standards than any other force in Australia. To be fair, below police in the honesty and ethics stakes were politicians, university lecturers, union leaders, lawyers, and journalists.

2. The Crunch Issue of Civilian Oversight: Assessing Credibility of Police and Civilian Witnesses

Before coming to the New South Wales model of civilian oversight, the subject of this address, I want to point to

what I believe is the critical or crunch issue for civilian oversight. The problem is not normally, in my view, inadequate internal police investigation.

The central test of the effectiveness of a civilian oversight body is how it deals with the inevitable problem of differing accounts of an event or events by police officers and civilians. The typical situation following internal police investigation of a civilian complaint is conflicting versions of the same incident. Often there will be one version given by the complainant, supported in some cases by one or more friends, and another version by one or more police officers. Sometimes there may be statements from one or more independent witnesses (whose statements have also been taken by the investigating police officer) who may or may not have a bias towards the police, the subject of complaint.

Another aspect of this, perhaps the reverse I think, is the so-called, in some jurisdictions in North America, "unsubstantiated" finding. That is, "well the police officers say this and the civilians say that and who are we to make a decision", and it falls into a category sometimes described as "unsubstantiated". In my view that type of finding satisfies no one. Lord Scarman in England, after looking at the Brixton riots, said of the English Authority that the verdict of not proven satisfies no one south of the Scottish border. I doubt that it even satisfies the Scots. It is a totally unsatisfactory situation for a complainant to receive, from the body to which he or she has complained, a letter - and I've got a few here from various authorities - saying just that. The complainant says this, the police say another thing, and the complaint is "unsubstantiated" or whatever the technical jargon. In my view the civilian authority has to grapple with that problem and make up its own mind.

The only solution to this problem is for the civilian oversight authority itself to question the police officers, the complainant and all witnesses and make judgements of credibility and form a view as to what happened. This questioning is time consuming, difficult and requires high calibre personnel and ample staff resources. However, in my opinion, a civilian oversight body which does not extensively utilize direct questioning itself but relies on paper statements taken by police officers, is deluding itself and the public. Such a body is a charade and a dangerous one at that. It deceives the public into believing that there is an effective watchdog or review body when there is not.

3. The Elements of the New South Wales Police Complaints System

The position just described - mere paper review of police investigations by the Ombudsman - was the position in the Australian State of New South Wales between 1978 and 1983. By Act of Parliament in late 1983 (just before an election in which allegations of corruption were playing a significant part) there was grafted onto the then existing system a power for the Ombudsman, at his discretion, to reinvestigate conflicting fact situations utilizing Royal Commission powers if he wished.

Stripped bare, the essential features of the New South Wales model are:

(i) initial investigation by police;

(ii) as a matter of discretion, re-investigation by the Ombudsman;

(iii) BUT (here's the "rub") in re-investigating, only police officers seconded to the Ombudsman's office are to be used;

(iv) after enquiry, findings on the complaint and recommendations by the Ombudsman as to institution of disciplinary or criminal proceedings against any police officer, pecuniary compensation to complainants, and/or change of police procedures;

(v) right of appeal by the Ombudsman to a judge of the Police Tribunal if the Ombudsman's recommendations are not accepted by the Police Commissioner.

The two features of this new New South Wales system which are probably of most general interest are:

(a) the use of Royal Commission powers, and

(b) the use of seconded police officers.

(a) Royal Commission Powers

Canadians at least are familiar with Royal Commissions. The re-investigations carried out by the New South Wales Ombudsman's office are in effect mini Royal Commissions. The armoury of powers available include the right to summons witnesses, to seize documents, to search premises, and the capacity to conduct full hearings.

I have in front of me the draft of our Annual Report for the 12 months ending 30 June 1985 - the first full year of operation of the new system. This shows that in this period 65 re-investigations were commenced. Forty hearings were held. These included investigation of:

(i) a complaint by a large manufacturer of poker machines that two New South Wales police officers, engaged in an investigation of the company, had provided false information to the New Jersey Gaming Commission and, more importantly for local purposes, to the staff of the Leader of the Opposition in the New South Wales Parliament. The defence of the police officers concerned was both that the information was correct and, putting it broadly, that their superiors were corruptly interfering with their investigations and that they had no alternative than to take out some "protection" or "insurance" by going to the Leader of the Opposition. Such was the detail and scope of the alleged corrupt attempts to interfere with their investigations that it was necessary to take evidence from 53 witnesses, involving 27 hearing days of my time.

(ii) complaints by a civil rights association in a country town about actions of police in helicopter drug raids and road blocks. (45 witnesses)

(iii) complaint by Sydney homosexuals about a police raid on one of their clubs. (27 witnesses)

(iv) complaint by an intoxicated university student celebrating a football victory that he was assaulted while detained in police cells (on the particular facts, he was believed as against the evidence of four police officers).

(v) several complaints against highway patrol officers of extreme rudeness and in one case assault.

(vi) two complaints of solicitation of bribes for dropping charges.

(vii) a complaint that a charge of horse stealing had been brought without any reasonable grounds. (A recommendation for $20,000 compensation has been made in this case).

(viii) failure to properly investigate a motor vehicle accident involving an Assistant Commissioner of Police (4th ranking police officer in the State).

(ix) complaint by alleged illegal off-course bookmaker about a raid on his premises including cutting off electricity to his shredder. (This complaint was found not sustained).

(x) numerous complaints about detention under would-be "reformist" legislation called the Intoxicated Persons Act which avoids, when people are picked up by the police for being intoxicated, the stigma of an offence or trial but leaves open the possibility of arbitrary detention.

Such investigations, of course, are time consuming and often difficult. At least in New South Wales - where substantial allegations of governmental and police corruption abound, where the public perception of police is low, where the former Chief Stipendiary Magistrate has been recently imprisoned on corruption charges, where a judge of the District Court and a former Minister of Corrective Services are facing other such charges, and where a judge of the High Court is presently appealing against a sentence of imprisonment imposed on him after he was found guilty of attempting to pervert the course of justice - a civilian oversight authority should not desist from determined first-hand enquiry because of the complexity and difficulty of the task.

In that task I am convinced the extensive use of Royal Commission-like powers is indispensable.

(b) Secondment of Police Officers to the Office of the Ombudsman

The New South Wales legislation of November 1983 was something of a compromise. While giving for the first time to a civilian body (the Office of the Ombudsman) the power to directly question police and other witnesses, it provided that this could be done only by the Ombudsman personally and police officers seconded to the office. Existing Ombudsman civilian investigators were, by the legislation, prohibited from becoming "concerned in" investigations of alleged police misconduct.

Civil liberties groups were outraged. The then third ranking officer in the Ombudsman's Office, Assistant Ombudsman Susan Armstrong, resigned in protest. While not unsympathetic to those views, I took the stance that the new

legislation had been passed unanimously by the State Parliament and that I should lend my energies to attempting to make it work. If after a year or so's trial it was not working I would criticize it vigorously and publicly.

The task seemed daunting. First a figure of ten police officers was set after discussion. The term of secondment was fixed at two years with an option on each side of a further two years. The then Police Commissioner suggested five Inspectors (salary $A36,251.00) and five First Class Sergeants (salary $A30,679,00). I demurred - wanting a greater spread of age and experience. Ultimately a circular was sent out by the Commissioner seeking volunteers from all ranks. Four weeks later he delivered (personally for some reason) a list of 30 police officers (all male) who had volunteered, accompanied by short particulars of their service careers. Some six applicants were Inspectors. The Commissioner, perhaps wisely, refused to indicate his own preferences. He inferred, with good humour, that he wished me to make my own mistakes.

With one or more senior civilian officers of the Ombudsman office I interviewed 29 of the applicants for at least an hour each. Having got the list down to 15 or 16 I made discreet enquiries of some ex-police officers, lawyers, judges and investigative journalists whom I know personally. As a result several names disappeared rapidly from the list. Partly on the theory of equal employment opportunity (which has been late in arriving in Australia) and more pragmatically on the ground that women might well be less part of the police brotherhood, I went in search of women police officers. Ultimately, I found one very experienced policewoman prepared to venture her career in the experiment. The ultimate complement selected by me comprised of one Inspector, three First Class Sergeants, one

Second Class Sergeant, two Third Class Sergeants and two senior constables. The fact that I had gone for a relatively junior group surprised the police hierarchy.

The ten police, who arrived at the Ombudsman's Office in April 1984, were spread geographically around the Office so that they were placed alongside civilian investigation officers who were engaged in ordinary investigations of State and local government instrumentalities.

Each police officer became an officer of the Ombudsman and was given an individual delegation of investigatory powers under the Ombudsman Act. This delegation was made subject to express conditions, that during the term of employment at the Office of the Ombudsman the officers would not take any directions from the Commissioner of Police, or any police officer of superior rank, including other more senior officers seconded to the Ombudsman's Office. Rank, within the office, was not to exist. Individual complaints were allocated to individual officers for investigation by them, subject only to directions by the Ombudsman. Their salaries were paid by and out of the (increased) budget of the Ombudsman.

After the experience of 18 months operation of the seconded police officer system some evaluation can now be made.

First, the failures:

(i) The most senior seconded police officer, while pleasant in personality, turned out to be what I would describe as a "plant". Somewhat incautiously, over dinner, he admitted that he had not wanted to come and had only done so at the

behest of a very senior police officer who we knew was opposed to the Ombudsman system. Within forty-eight hours his Ombudsman delegation was withdrawn and he was back with the police department.

(ii) Another seconded officer, as a result of excellent "in the field" investigation by another junior seconded officer, was identified as a previously unidentified police officer, the subject of a complaint already lodged with us. He had to leave the office during the investigation. He now does not want to return, and knowing what we know that is a relief.

(iii) Two other seconded police officers proved quite incapable of the admittedly difficult task of investigating and asking probing questions of their former colleagues. After discussion each made application to return to the police department.

The other side - the successes:

(i) The office now has an enthusiastic and dedicated group of police officers who see their role as Ombudsman's officers as important and challenging.

(ii) In addition to the first policewoman, Sergeant Gwen Martin, the office has attached another police-woman, Sergeant Barbara Fraser. She has an outstanding law degree. She has won a three month Churchill Fellowship to the United States and, at a conference of U.S. policewomen in Alaska three weeks ago, received an award as the outstanding foreign policewoman of the year. During her

absence another very able seconded policewoman, with excellent scientific qualifications, has carried out a splendid investigation of a man found in a coma in a police cell. My hunch that women might be very good at this job is proving correct.

(iii) Four seconded police have been promoted while on secondment - so that service with the Ombudsman is not seen as necessarily detrimental to a police officer's future career.

(iv) The presence of police officers at the Office of the Ombudsman has contributed somewhat to the reduction of the natural hostility of those police who are called to a civilian office to be questioned.

(v) The capacity of seconded police officers to be independent may be illustrated by this exchange between a senior police officer who was the subject of a complaint and a seconded officer:

"Young man, do you realize you eventually have to come back to the Police Force?"

"Yes, sir, I do, but while in this position I'm going to do my duty."

"You're not going to report this conversation to the Ombudsman, are you!"

"Yes, sir, I am."

Another reflection of the capacity for independence of the present seconded police officers is in the increasing criticism being mounted against them by their own trade union, the New South Wales Police Association. Its volatile President has dubbed them as "spies"; branch resolutions have called for their expulsion. It would seem they are doing their job too well!

(vi) Finally, there has been an interesting and stimulating cross fertilization of ideas and ethics between seconded police officers and civilian investigators working alongside them in police/governmental investigations. The Office of the Ombudsman has come to be known as a good place for good police officers to work. Through word of mouth there is now developing a waiting list for positions. With the advice of trusted police officers presently on our staff we should make fewer mistakes in selection in the future.

On balance, therefore, and much to my surprise, the secondment of police officers to the Office of the Ombudsman has been a substantial success. However, the ideal, in my view, remains one which would enable the civilian body to utilize in its investigation a mix of police and civilian investigators.

In April this year, after one year's operation of the new legislation, I made a strong report to the New South Wales Parliament calling for a lifting of the ban on our civilian investigators participating in the reinvestigation stages of police complaints. The betting in the corridors of power is that there will be another compromise - by allowing the Deputy Ombudsman and Assistant Ombudsman to be

involved but not other civilian investigators. As State Parliament is now resuming, after our southern hemisphere winter recess, I should know the answer when I return next week.

4. Evaluation of Differing Civilian Oversight Bodies - Suggested Criteria

Believing that a so-called Keynote Address ought to have some ostensibly wise general content I have made bold to list what I regard as the ideal characteristics of a civilian oversight authority. I say "make bold" because I suspect that a number of bodies represented here reject what I believe to be the central features. They are as follows:

(a) The Authority should be a civilian, independent of the Police Department or Minister for Police (or equivalent); where the Authority is comprised of a number of persons, it should be headed by a civilian and at least the majority of the persons comprising the authority should be civilians. Ideally, the civilian head should be appointed by the Legislature.

(b) In order to properly investigate disputed issues of fact, the Authority should have and utilize direct coercive powers to compel the attendance of police and civilian witnesses and to compel answers to all questions. Where a witness claims privilege on the grounds that the answer may incriminate him or her, the answer, while compellable, should not be admissible in court proceedings except for alleged falsity in the answer.

(c) The Authority, in its investigations, should not be bound by the rules of evidence and may adopt formal or informal procedures as it chooses.

(d) The Authority should also have powers of entry, search and seizure and production of documents.

(e) The Authority should be obliged to ensure fairness and natural justice in its procedures.

(f) The employment, terms of employment and numbers of investigative and other staff should be wholly within the control of the civilian head. Investigation staff should not include currently serving members of the police force, the subject of scrutiny. This should not preclude the Authority, if it so decides, recruiting such police officers who, upon transfer to the Authority, cease for the time being to be employees of the Police Department and become employees of the Authority, subject only to the direction of the civilian head.

(g) The Authority should have power to make its reports public and otherwise release information directly to the public.

(h) The budget of the Authority should be fixed independently of any police or executive Authority.

(i) The Authority should have the power and sufficient funds to retain experts and advisers (whether in law, forensic science or otherwise) when the nature of an investigation requires this. The exercise of power should not need the consent of any other person or Authority.

(j) (i) In relation to complaints referred to police for initial investigation, provision should be made that, after the expiration of a specified period,

the Authority can, if it wishes, itself investigate the complaints, even though the police investigation has not been completed.

(ii) The Authority should have a discretion to directly investigate from the outset any complaint, in respect of which the Authority believes it would be undesirable and not in the public interest to refer to police for initial investigation.

(iii) The Authority should have power, of its own volition, to commence investigations into possible police misconduct even though no complaint has been made--the so-called "own motion" power that most Ombudsmen have in relation to other government Authorities and Departments.

(k) The Authority should have the ability to make binding recommendations for compensation of individuals adversely affected by police misconduct, whether or not damages would lie at law.

(l) The Authority should have a public and police educational and publicity function. The aim would be to inform the public and police about the work of the Authority by producing pamphlets, conducting lecturing programmes and utilizing the mass media.

I should first quickly apply the criteria to the New South Wales experiment I have been briefly considering here. Applying the criteria to our own modest system, it would rate about 65% to 70% of these criteria. The Swedish system seems better, but I will leave its analysis to Ulf Lundvik tomorrow.

If you can be impressed by listening to someone for two minutes, I am very impressed by Ian Scott. What he said struck me as having a very strong ring of truth, that civilian oversight bodies have to be seen to be impartial. It doesn't matter how much they are staffed with able people, able police officers, the question is public credibility. Linden in one of his early papers, his early reports, stressed that.

Now to take, perhaps unfairly, (a little knowledge is a dangerous thing to take) the New York C.C.B. Glen Tucker is here as well as the legal officer. The problem there, by way of example it seems to me, is that however effective that body is, however able its investigators, it is not perceived as being independent of the police. On a taxi driver test, every taxi driver I have spoken to said, "ahh, it's police investigating police". And that's what I think is so important about the Toronto experiment.

I must confess I was very impressed with a relatively small unit, recently set up in Brooklyn, under the redoubtable Liz Holtzman, the District Attorney for that State. Brooklyn Law Enforcement Investigations Unit, under Assistant District Attorney Edna Handy, provides the sort of (but for its limited resources) powers and civilian involvement, with the capacity to follow through right to prosecution, that I believe a civilian body should have.

In my view the only (leaving that very recent model aside) civilian oversight Authority which, to my knowledge, comes close to satisfying all the criteria I listed, is the Metropolitan Toronto Public Complaints Commissioner. The Metropolitan Toronto Council is to be congratulated in its innovative concept.

Thank you very much for inviting me to this conference. I look forward to spending the rest of it listening in silence and learning. Thank you.

C. The Honourable Ken Keyes, Solicitor General, Ontario

Ladies and gentlemen, I am particularly delighted to be here today as the Solicitor General and to host this luncheon on the occasion of the first conference -- hopefully the birthday of the International Association for Civilian Oversight of Law Enforcement. This Association offers a threshold, for persons working in the field of civilian oversight in many countries, to input on police-community relations and to provide an exchange of technical assistance and education for jurisdictions interested in developing civilian oversight programs.

It is extremely gratifying to have this opportunity to commend Sidney Linden for the fine work that he has done as the Public Complaints Commissioner here in Metro Toronto and especially for the exhaustive task that he and his staff have undertaken to organize this four day conference. This is obviously a very successful event, because of the great number that I see here and, more particularly, because of the excellent representation from around the globe. I warmly and heartily welcome each and every one of you here today, to the conference and to the luncheon.

The Ministry of the Solicitor General is basically responsible for overseeing law enforcement and public safety across this very broad Province of Ontario. Policing is the most visible part of that mandate. It's direct with respect to our Ontario Provincial Police (O.P.P.) and then somewhat more indirect with regard to our 127 municipal and regional police forces.

The O.P.P. is the largest group within my Ministry and accounts for more than 5,000 uniformed and civilian personnel. I certainly say with pride that these people

comprise the fourth largest police force in North America and have gained an enviable respect and reputation throughout the world.

Besides overseeing the criminal and the traffic law enforcement of the Province, the Solicitor General also administers a great deal of other specialized areas, such as a specialized scientific criminal analysis facility -- the forensic science laboratory. We look after the standards for fire safety and we determine the cause of death in unusual circumstances through some 400 coroners. We coordinate all the emergency planning in the Province to look after major disasters, whether it be hurricanes, floods, train derailments or things of that nature.

Our established policing system is vast and it is necessary because we police a total area of one million square kilometres--that is many times over the size of the fine country of Holland--so our staffing is extensive. The training of this staff is of great importance, if we are to prepare these people to keep abreast of our changing laws and procedures. It is in this field of training that I commend to you that most of your work must be done, if you are going to try and avoid the type of complaints that come to public complaints commissions.

The Ontario Police College in Aylmer, Ontario, is a world class institution that provides a complete training program for the municipal police forces across Ontario, from probationary constable to high-ranking management. We also train police officers from other jurisdictions. Just recently we have started training police from Bermuda.

The O.P.P. has their own academy in Brampton, Ontario. Items of a specific nature, relative to our Provincial Police force, are dealt with at that college.

It is vital for police personnel to continually fine tune their understanding of what is happening in their communities. Both these institutions ensure that the people of Ontario receive the most efficient, effective and up to date service possible. In all training courses appropriate emphasis is placed on the human relations aspect of police work, in order to reduce the potential friction between the citizen and the police. The student leaving our college is much better equipped, not only with the required technical knowledge to do his job well, but also with the increasingly important inter-personal relationship skills.

In our hiring procedures many factors are taken into account. We make certain that the people we hire have far more than just the minimum requirements. For example, a great many people joining our police forces now have university degrees. We also make sure that the people we hire are screened from the standpoint of their psychological make-up. We look at the kind of person they are and how they deal with people. We try to find those who have a very broad complementary training, perhaps in other fields. The wages attained through our collective bargaining process have enabled us to bring in people with much higher levels of education.

We recognize the need for a greater representation of our ethnic communities which will more truly reflect the cultural mosiac of Ontario. We also recognize a need to increase the representation of women in our police force. Our government has set out on a path of trying to be sure that women are represented at least to the extent of 30 percent in all of our departments, including top management, and that is a goal we hope to achieve in a reasonably short period of time.

I recognize, as Solicitor General, and as a former Mayor of a city and member of a police commission, that there is a need for a recognized forum to which citizens can direct their complaints regarding police activities or the treatment they received in the hands of the police. In many municipalities in our Province -- many of the small ones and some of the large ones -- it is handled by the local police commission. This process is often subject to the criticism of police investigating the police.

While the majority of our complaints are handled quite effectively by local police commissions, some are referred to my Ministry and then, as John MacBeth would have mentioned today, on to the Ontario Police Commission, which can then provide somewhat more independent review of the citizen's complaint.

Of course, through the government responding to both the Solicitor General and the Attorney General, we have the Public Complaints Commission which has been started in Metropolitan Toronto. It is doing a very outstanding job, along with the many people who serve on its disciplinary Boards of Inquiry that are called from time to time. This particular method provides the most independent system possible for the hearing of citizen complaints. The expansion of this model to other jurisdictions in the Province has been considered from time to time and is one that we will be reviewing in the future and one that we heartily recommend to many municipalities, if they are suffering the problems of not having been seen to deal impartially with their complaints.

I do not want to take the time from our guest speaker. I simply want to wish you all well in your conference deliberations and trust that you will return to your

respective jurisdictions confident that you have found improved methods of dealing with the sensitive relationships between the public and the police. Welcome to Canada, to Toronto. Enjoy the conference.

D. Dr. Jacob Rang, Ombudsman, The Netherlands

For a right view on the subject it is good to start with some brief information on the social structure of Holland today and then I hope you will have a slight insight into that new political disease we have in Europe. It is called "Hollanditis" because it started in Holland.

Do you realize that this very small country below sea level has more than fourteen and a half million citizens and the highest density of population in the world? Three hundred and forty-three (343) citizens on a square kilometre and one of them is a police officer. Do you realize what the consequences are of this overpopulation, in relation to our government policy of complete humanitarianism and free immigration, for instance, of foreign labourers, displaced persons and political refugees? One broken dike will swallow and one atomic bomb will kill more people than elsewhere in the world. That's our Dutch trauma!

Since the Canadian army liberated us at the end of the second World War, the structure of Dutch society has undergone two waves of radical change. Economic reconstruction led to a welfare state with a well developed social security system. A high level of economic activity brought about structural labour shortages, especially where unskilled jobs were concerned, and the gap was filled by recruiting foreign workers during the time that thousands and thousands of skilled Dutchmen emigrated to Canada and other countries.

Partly in conjunction with prosperity, our humanitarian attitudes toward human liberty (which have been traditional in Holland down through the centuries) paved the way for the free use of soft drugs, a tolerant policy on hard drugs and broad views on sex and morals.

This liberal and at the same time socialistic society has now been superseded. The oil crisis was the prelude to economic decline, high unemployment (more than 20 percent) and a crisis in the social security system. The problems associated with the second generation of migrant workers made it clear that the policy of non-integration and of enabling immigrants to retain their own group identity was a mistake, with all the social consequences this entails.

It is increasingly obvious that this tolerant country (as Holland is at the moment) does not know what to do about its ethnic minorities. Moral freedom has resulted in practices as regards drugs and alcohol, sex and pornography, which have become impossible for the legislature and the courts to control. And, in my view, the growth of petty crime, crime associated with drug abuse and crimes of violence, must be seen as a series of inter-related developments taking place against this background.

Indeed, until the 1970's Holland was an underdeveloped country in criminological terms -- in other words, there was relatively little crime. But in 1984 the situation was quite different as more than 4 million Dutch citizens suffered from some form of crime. More than one million crimes were noticed by the police in official reports -- 355,000 concerned robbery, and more than 2,000 offences against life. More than 60 offenders were armed kids, younger than 15 years old.

Of every 100,000 citizens, just 29 were detained. To compare, the figure for the United States, as told to me, was 213 and for Canada 95. The reason for that low incarceration rate in Holland is, of course, not that the crime rate is low, but more the idea that detention is not always, and perhaps never, an adequate remedy.

As a result of all this, the position of the police has changed and their contact with the public has become more frequent, less kindly and generally different. The emphasis was shifted from preventive action to reactive and repressive policing and that has consequences for the skills which the individual police officer now requires -- the ability to use force and the ability to use social skills. It is in the light of this situation that the debate on the processing of complaints about the police must be seen.

But there is, of course, another social trend which plays a part in this debate about police and changes in Dutch society, namely, the coming of age of the citizen, in the sense of being able to participate actively in decision-making, as a direct consequence of the democratization of our society. In recent decades the position of the police in a democratic society, governed by the rule of law, has increasingly come under discussion because the State itself, and the position of the citizen in it, is being re-evaluated. The further democratization of the State, particularly in the non-political sphere, is in full swing and new ways and means are being found of giving the public at large more responsibility and permitting them to exercise direct or indirect control over administration.

Under these circumstances automatic acceptance of police action is no longer appropriate. Nowadays it is uncommon, in Holland, for police action to be regarded as an exercise of authority which is, by definition, legitimate and indisputable. One of the results of the developments during the 1960s was that police action as such, and hence also police policy, were observed and debated critically.

From the 1960's onwards there was also a public debate as to whether a legislative Ombudsman should be appointed

(in accordance with the Swedish model) to investigate, either in response to complaints or on his own initiative ("own-motion" power), whether an administrative body has acted properly in a given matter. In 1981 this debate led to the passing of the National Ombudsman Act which came into force on January 1, 1982.

I have the honour, the pleasure and the troubles to be the first National Ombudsman that Holland has had. Under the provisions of the Act, I am empowered to consider complaints about central government, including the army and the national and municipal police forces. In my view, there is no objection to calling the Dutch National Ombudsman an examining magistrate, provided that one remembers that my rulings are not binding. Government bodies can be encouraged to act in accordance with my ruling, on the one hand by having questions asked in Parliament, by the publicity given to my work and by my powers of persuasion, and on the other hand by the rectitude and the independence with which my investigations are carried out and by the correctness of my arguments.

If I say that the institution of the National Ombudsman has become an established and indispensable part of the Dutch system of legal protection I cannot help feeling a certain pride. That it has become so is confirmed by the fact that I have received, during the last four years, more than 11,300 complaints, and that I have issued more than 600 special reports, many of which have resulted in changes in legislation, policy and administrative methods. More than 800 of these complaints related to the police. Police action itself was mentioned in 147 special reports.

As the National Ombudsman, I am the independent, external authority for dealing with police complaints. In

my work the emphasis is not on reaching a settlement between the parties but in expressing my view on whether the police have acted properly.

The trend to greater democratization of Dutch society has not left the police untouched. In many Dutch local communities it has led to police forces devoting attention to internal procedure for dealing with complaints by the public. But it must be my conclusion that the aim of an internal police complaints procedure is more limited than that of an Ombudsman complaints procedure.

The internal police investigation often has a more disciplinary purpose, leading to corrective measures by police management which can be imposed on staff under the rules governing their own legal status. If a good evaluation is made an internal procedure may, of course, improve the police capacity for learning and increase the complainant's confidence in the police and perhaps even give the complainant satisfaction over a dispute. However, this is, in my opinion, counterbalanced by the disadvantages which arise, because by definition it is impossible to meet the stringent requirements with which an Ombudsman procedure must comply--a completely independent and objective approach to every complainant and complaint, to reach and earn the credibility and the confidence of the public.

For members of the public making complaints there are, in Holland, three possible complaints procedures. First, if a police officer has committed a criminal offence, the complaint must be dealt with by the Public Prosecutions Department (but that is a complex situation because complaints against that department are also under my jurisdiction). In all other cases the public are entitled to choose between the internal police complaints procedure,

where it exists, and the National Ombudsman. If a case is lodged with the police or the Ombudsman, neither is obliged to transfer it to the other.

The way in which complaints about the police are dealt with in Holland is affected by the organizational structure of the police. The distinction between local municipal police forces and the national police force is an important one. Municipalities with a population over 25,000 have their own police forces while the national force serves smaller municipalities. Local forces are answerable to the local mayor (burgomaster) who must obey instructions from the Minister for Home Affairs. Complaints about the police may be presented either to the mayor or to senior police officers, who may have established a special internal procedure for dealing with complaints. There are 148 municipal police forces in The Netherlands with a total of about 24,000 officers.

The Minister of Justice is in charge of the national police force which is headed by a general inspector with the rank of General. The Minister is also responsible for the instructions and guidelines issued to the police. Regular consultations take place at national, regional and local levels, the local ones being held between the mayor and the local head of the national police. The brigades in the national police force are operating in 17 districts and in 640 smaller local communities with a total of about 14,000 officers. The force has no internal complaint procedure.

When dealing with complaints about the police in my capacity as National Ombudsman I have to approach either the Minister of Justice or a mayor. Depending on which aspect of police work is concerned, however, I may also have to approach the Public Prosecutions Department or other

Ministers, because police work in Holland falls into three basic parts -- (1) preserving public order, under the authority of the mayor, (2) implementing policy on criminal investigations, under the authority of the Public Prosecutor and (3) implementing particular Acts of Parliament, under the authority of a Minister.

When I receive a complaint I consult the complainant (I think it is very important to define the scope of the complaint) and then initiate the investigation by contacting the authority to which the police force in question is answerable. There are situations in which I would do well to carry out the investigation myself by hearing the police officers concerned, police management and the complainants through on-the-spot investigation and so on. Even if I do so, it may become apparent that the police have already investigated the complaint and the incident to which it relates. In that case the police will have to place the results of their own investigation and the documents relating to it at my disposal. I shall then decide whether the investigation was organized and performed in such a manner as to provide an acceptable basis for my assessment. If I find that it was not, I have the option of instructing the police to reopen the investigation or, alternatively, of conducting an investigation myself.

After an investigation has been completed, I state my findings and my judgement in the light of those findings and, if appropriate, a recommendation. If, on the other hand, after supplying the initial information I find that the police are still in the process of carrying out an internal investigation, I must give the police a reasonable period within which to complete it. After that I proceed as I mentioned previously.

If no investigation has yet been initiated I may, depending on my powers, order or request one or initiate one myself. I may wish to investigate, myself, if there is reason to doubt the objectivity and independence of the investigation or if the case relates to a serious escalation of police action, if it relates largely to policy or if it involves extremely disproportionate use of force or a major incident. In each individual case I must decide whether I am sufficiently informed about the facts to reach a conclusion about them.

In this connection the question arises, and that was the discussion of this morning, whether the Ombudsman himself or his office should possess appropriate knowledge and experience of police work. My answer is certainly affirmative. Even in cases where I, as the National Ombudsman, take the view that an investigation can be left entirely to the police, it will still be necessary for me to assess the material supplied by the police and this requires the proper expertise. For that reason I took three former police officers, two lawyers specialized in criminal law and two criminologists into my service as investigators.

Ladies and gentlemen, the confidence of the citizen in the government, and hence in the law enforcement officials, which is necessary in order for any society to function properly, depends on the machinery of control over the police and other law enforcement agencies. For too long this democratic control was underdeveloped. The procedure for complaints to the Ombudsman, or any external complaint board with legal powers, could make an important contribution in this respect, on the assumption that the purpose of the office of the Ombudsman or the board is always, essentially, to restore public confidence in the authorities when it has been damaged.

Thank you so much, ladies and gentlemen, for your kind and patient attention.

E. Clarence Dickson, Chief of Police, Miami, Florida

To all of the members and participants from such great and traditional countries as Australia, Bermuda, Canada, Ireland, Northern Ireland, Sweden, The Netherlands, Nigeria and the United States, good morning and may God bless this conference for the good and humane principles that it stands for.

I am humbled by your invitation granting me the opportunity to stand before you this day. I am humbled because for years law enforcement has stood too proud, too aloof, too separate, too protective, too defensive, too on guard, too shielding, too paranoid and too suspicious to cooperate with civilian professionals in the sociological and the investigative arenas. I make this statement as a testimony to my facing this truth, that police-community relations is a dead issue without civilian input - real and not imagined input.

I would like to relate to you an allegoric tale, written by a fourteen year old kid (the allegory demonstrated the importance of obtaining accurate feedback from the proper source, i.e. the community).

Colleagues, we come at a time when police-community relations is in high competition with its most formidable villians -- recession, outrageous food prices, inadequate education systems, hard-core unemployment, a criminal justice system with a revolving door that is stuck on "go" and, even more basic, a recall on credit cards and no new credit, and creditors who tell us that we should have known better. Interest rates are swinging between 12 and 20 percent. There is a diminishing number of new housing starts, ineffective public facilities, insufficient

educational facilities, deterioration of the family as a unit of our societies and lack of police ability to provide a mechanism for enforcement activities to ensure that these social failings will not aggrandize and materialize into some manifestation of criminal activity on the streets.

Even the most casual observer realizes that we are living in a time which is marked by more hate than love, more poverty than wealth, more discord than unity, more neglect than attention and more problems than solutions. We are engaged in discussion of the discussions and another attempt to create and implement a Plan B, for the Plan A that failed.

Law enforcement cannot operate in a vacuum. We have tried it -- it will not work in a free society. In our own way we have made it most difficult for meaningful civilian participation, and I say that you are arriving not because of us, but in spite of us. On behalf of my colleagues in law enforcement, I say to you - International Association for Civilian Oversight of Law Enforcement (IACOLE) - do not abandon your cause. You have gained our respect and when you have completed your mission at this week's conference you will have also gained ground, considerable ground.

As I understand, one of the goals of the mission is to develop an international forum for all those persons who either work directly in the field of civilian oversight of law enforcement or are interested in the subject. The Association's mission will be to seek to develop mechanisms that will enhance police-community relations and encourage law enforcement agencies to respond with sensitivity to public complaints. To the Association, I call upon you to pursue this noble mission with all deliberate speed. You must not become disenchanted, you must not become discouraged, you must not change your course of action.

Somebody is going to have to stand away from the crowd and make a decision. They are going to have to decide whether they want to stand on the side of right. Somebody is going to have to avoid the grey area in order to gain a proper perspective of our dilemma and make some sensible and realistic recommendations on ways of improving the police relationship with all segments of the communities we serve.

Years ago, when we talked about police-community relations problems in America, we were talking about the police inability or refusal to make positive attitudinal or behavioural adjustments in the manner in which police services were delivered to the black communities. In many cases the services may have been satisfactory, according to standard, but the attitude and behaviour was inexcusably deplorable.

A police officer with a poor attitude and behavioural problem who responds to a robbery, investigates and talks to the victim and then catches the culprit within fifteen minutes, may later draw relucant praise from an otherwise grateful victim. On the other hand, a police officer with a good attitude and respectful behaviour, who catches the same culprit four hours later, instead of fifteen minutes, will draw unbridled praise as a great cop, in a great police department.

It is simple. People want respect, especially from officials in authority. It is a priority.

In the past, police have rarely sought civilian assistance in any systematic way, and least of all in those areas where enforcers of law have been hardest pressed. You, IACOLE, have agreed, without threat or coercion, to step outside of the grey area -- to get a true perspective

of things. At a time when people from all walks of life are screaming for tougher law enforcement and at a time when politicians and citizens are hinting that they might wink at a little police misconduct, as long as it is directed at the right people, and done with some moderation, you alone, IACOLE, have made a decision to stand away from the crowd and make an objective critical observation.

This is your first international conference and I am privileged to attend. I appreciate that very much. This conference tells me, with great assurance, that you have made your observation and that you have chosen to pursue and act on what is right, instead of what is popular. I hope that your Association will seek to develop mechanisms that will enhance police- community relations and encourage law enforcement agencies to respond with sensitivity to public complaints and I add "Lest We Forget".

The people attending this conference are here to help law enforcement maintain a professional demeanour in the midst of today's confusion. You, IACOLE, are saying, "Let's not forget the victims, let's not forget how to do it right. Let us not lose our sensitivity toward the people we serve." That is the message that I hear, as a Chief of Police in a very active city.

I believe that I speak for most of the Chiefs of Police -- I am tempted to say all, but I can, with a greatest amount of assurance, say most. We thank you for taking on this particular mission. IACOLE, you are probably the truest friend that we have in law enforcement, because you have dared to be different at time when it counts. Thank you.

F. Judge Ulf Lundvik, former Chief Parliamentary Ombudsman, Sweden

Introduction

Quis custodiet ipsos custodes (who shall supervise the supervisors themselves)? This question was asked in ancient Rome and it remains topical today; in some countries very much so. My home country, Sweden, is no exception and the supervision of the police has attracted a good deal of attention in recent years, although the Swedish police are not reputed for malpractices. Yet, in a force that comprises some 16,000 persons, there will inevitably be some members who need watching.

Fortunately, corruption among the police is almost unheard of in Sweden. Our main problem is, rather, that some policemen are too prone to resort to unjustified violence. The police have a right to use force when required for the performance of their duties, but they must never use more force than is really necessary. Some policemen, I regret to say, tend to overstep that limit.

Also, other forms of police brutality do occasionally happen. Even if these occurrences are rare - and I do stress that they are - we deem it necessary to have means to check any such tendencies. We also strive to promote a good relationship between the public and the police. To that end we have, in the 1980's, discussed, decided upon and implemented a number of reforms, all aimed at giving citizens insight into the work performed by the police.

Lay members of various police boards will, in the near future, take an active part in decision-making concerning, for instance, the overall organization of the police in a county or a police district, the activities that should be

given priority, how moneys should be used, say for the purchase of automobiles or motorcycles etc. We have also commenced an experiment in a few cities with so-called "civic witnesses", laymen who attend at police stations to watch what happens when people are taken into custody and interrogated. Also, we have planned reforms concerning the way to handle complaints against the police. All this is very new and not yet fully implemented. I hope it will be of some interest for people outside Sweden to learn about our efforts.

I will deal with the subject under three headings. The first will be the role of the lay members of various police boards. The second heading concerns the use of "civic witnesses" and finally the third will deal with complaints about assault committed by policemen or other forms of police brutality.

The role of the lay members of various police boards

First, a few words about the main features of Sweden and its police. Sweden is, as you may know, a unitary country. It is divided into 24 counties whose population and territorial expanse vary considerably. The county administration - in Swedish "lansstyrelse" - has a very important function, covering most aspects of national administration. The county administration is headed by a government-appointed Governor who is also the chairman of the County Administration Board, which has 14 members, all elected by the County council. There are a few exceptions from this rule but I leave them, as well as some other details, aside. The counties are subdivided into municipalities. Some major municipalities (for instance Stockholm, the capital of the country) form their own police district. Other police districts are composed of several municipalities. In all there are 118 police districts in Sweden.

The police have been nationalized since 1965. The National Police Board is the highest police authority in the country, aside from the government. The Board's function is mainly administrative. To some extent the Board also leads actual police operations, notably when matters of national security are concerned or for the repression of drug trafficking. Further, operations where aircraft are used are also led by the National Police Board.

The National Police Board consists of the Commissioner of the National Police, his deputy and six government-appointed members, selected among members of Parliament and so chosen that all the major parties are represented. These lay members are all politicians of a high standing within their respective parties. They have an important function, particularly concerning matters which have a bearing on national security. Such matters are largely secret, even top-secret, and Parliament has therefore found it essential that at least some representatives of the citizens have an insight into what is going on, even though they cannot report publicly upon what they have seen or heard.

A recent reform aims to reduce, to some extent, the role of the National Police Board and lay the main responsibility for the work performed by the police on the regional and local levels.

The regional level means the counties. There, the highest police authority is the County Administration Board. In the future the Board will play an important role in police matters. This is a novelty because the Board itself, as distinct from the county administration working under the Governor, did not previously take an active part in the planning of the work that should be performed by the police. Henceforth the Board will decide, for instance, what special

forces should be organized for traffic control or what other measures should be taken within the police for the benefit of the county in its entirety.

The County Administration Board cannot, however, lead actual police operations. On the county level such operations could be led by the Governor himself, although this will happen only in exceptional cases, or by the county chief of police. In most counties this is an officer attached to the county administration with only a few policemen at his immediate disposal. This officer's role is largely to act as a co-ordinator of the activities of the local police forces. He has also some administrative duties.

Recently, a new system has been introduced in some of our counties (among them the county of Stockholm, which includes the city of Stockholm and its suburbs) as well as a few rural areas. Under this new system the chief of police in the principal city of the county is also the county chief of police. As the principal city generally has the largest police force, the county chief of police under this system has, at his immediate disposal, a far greater police force than he had under the old system. We still lack experience of how this new system will work but it appears that the police in Stockholm, so far, are satisfied with it.

Most of the police work is conducted at the local level, that is, in the police districts. The highest authority there is the Local Police Board, which consists of the chief of the local police, his deputy, if there is one, and six to ten lay members elected by the municipal council or, where there are several municipalities within the police district, the county council.

The Local Police Board is not authorized to lead actual police operations (they are led by the chief of the local police or one of his senior officers) but in all other respects the Board is in command. The national government draws up a basic organization for each district but leaves all details to the Local Police Board (and to some extent also, the County Administration Board). This gives the Board very broad powers. It can, for instance, subdivide the district into areas each with its own police station. It can decide what equipment - such as radio transmitters, automobiles etc. - should be purchased, and what support staff - typists, messengers etc. - should be engaged, provided the necessary moneys are available. This system is completely new. Previously, the Local Police Boards had only an advisory function, but no real power.

It is hoped that the parties will select members for the Board who take a real interest in police matters and who have a high standing in their respective parties so that their word will carry some considerable weight. It remains to be seen if these expectations will be fulfilled.

I should also add that the chief of the local police force, although ex officio a member of the Local Police Board, is not automatically its Chairman. It has been customary for the Board to elect one of its lay members to serve as Chairman.

The civic witnesses

As was mentioned in the introduction, the system with civic witnesses is still only an experiment confined to a few cities. It began in 1957 in Gothenburg, the second largest city in Sweden. The Swedish Code on civil and criminal procedure prescribes that when the police

interrogate a person a trustworthy witness should be present, if possible. It is, however, seldom possible to find a civilian person who is willing to act as a witness to the interrogation and who can spare the time required. Therefore, in most cases there is no witness present during the interrogation and if there is a witness it is usually a policeman. In Gothenburg many resented this state of affairs, which can well be said to run counter to the spirit of the Code.

In 1957 the Gothenburg City Council decided to elect 60 laymen to act as witnesses. They were to be present not only at interrogations, but also on occasions when intoxicated persons and those suspected of crime were taken into custody. The witnesses could also attend when the police searched a person's home or took similar measures. The witnesses were paid by the council every time they served and they usually served one day and one night every sixth week.

Initially the police took issue with this system. They regarded it as a sign of distrust of the police. However, after some time the police force of Gothenburg changed its mind. It was noticed that the number of complaints against the police for alleged brutality was steadily decreasing. This was attributed to the fact that there was always at least one impartial witness present who could testify to what actually took place. After that, the system in Gothenburg worked to the satisfaction of both the police and the public.

Some members of the Swedish Parliament took an interest in this system with civic witnesses and suggested it be

adopted in other cities too. Private members' bills were introduced in Parliament but they met with little or no success. In the early 1980's a county capital, Vaxjo, suddenly decided to elect civic witnesses, as in Gothenburg. However, a taxpayer challenged the decision, alleging it was beyond the council's power. The case was ultimately taken to and adjudicated by the Supreme Administrative Court of Sweden. The Court ruled it was illegal for a municipal council to spend taxpayers' money for such a purpose, since the police are a national, not a municipal, concern. The council's decision was rescinded.

At about the same time a government bill was introduced in Parliament, providing for legislation that would make it legal for municipalities to elect and remunerate civic witnesses. Simultaneously, a private members' bill from the opposition advocated State subsidies for the three largest cities, to be used for the remuneration of civic witnesses. Both bills were passed by Parliament, although the opposition's bill received only a feeble majority.

Today, any municipality can elect civic witnesses if its council so wishes, but only the three largest cities will get State subsidies. The reason for this system, which on the face of it may seem discriminatory, is that it was held that a real need for civic witnesses existed only in the three largest cities. The curious thing is that civic witnesses are found only in two of the designated cities -- Gothenburg, where the system originated, and Stockholm, the national capital, which adopted the system in 1983, and then only as a two-year experiment for part of the city. The third city, Malmö, has not adopted the system nor, to my knowledge, has any other municipality elected civic witnesses.

There seems to be no real enthusiasm for the system, except in Gothenburg. The national police union is strongly against it, despite the experiences gained in Gothenburg. The union looks upon Parliament's decision to allow municipalities to elect witnesses, and to remunerate them as an outright scandal, a most regrettable token of distrust of the police. The municipalities, for their part, are afraid the system would be costly and they hold that the moneys could be better used for other police-related purposes. The police are understaffed and underequipped; the moneys could be used to remedy those wants instead. The decision of the city of Malmö not to accept the subsidies it is entitled to can perhaps be explained by fear that the granting of subsidies, which is made annually, could be discontinued by a new Parliament.

Complaints about assault committed by policemen or other forms of police brutality

This is, by far, the most topical part of my paper. In recent years no less than three government-appointed Commissions have considered how and by whom such complaints should be investigated. The first Commission reported in 1975 but no action was taken because its recommendations met with heavy criticism. The second Commission submitted its report in 1979. It led to some reforms in 1981, although the reforms were of no great magnitude. Finally, the third Commission reported in 1984 and the government is still considering what to do. A government bill is expected to be presented to Parliament early in 1986.

As things now stand I will leave details of the present system largely aside and concentrate on the broad principles.

The problem in Sweden is the same as almost everywhere else. Most investigations about alleged police brutality are conducted by the police. The public does not like it; in their view the police should not be investigating themselves. But who should do the job? Suggestions have been put forward that we should set up a special force of investigators, quite independent from the police, for that purpose. But this would inevitably involve heavy expenditure and could possibly cause difficulties of other kinds.

However, since the reforms of 1981 our system is not quite so bad as people believe. There is little or no evidence that the police try to protect colleagues who have disregarded their duties or otherwise behaved in a way that is not permissible. Further, the police are not the only ones that are involved in the process.

In Sweden we have an organization of public prosecutors, separate from the police. In all criminal cases the pretrial activities should, in principle, be led by a public prosecutor from the moment the police suspect a certain person of the crime. In most cases the prosecutor, although formally leading the investigation, relies heavily on the police, leaving it to them to examine the suspect and witnesses, and only takes on responsibility for the case when the investigation is almost completed.

Since 1981 the system is different when the investigation concerns an allegation about assault or other brutality committed by a policeman. (In Stockholm, Gothenburg and Malmö there are separate divisions within the police force for the handling of complaints against policemen and the following rules do not apply when the investigation is conducted by one of those divisions.)

Whenever the police receive such a complaint, a senior public prosecutor must be informed immediately, and it is then the responsibility of that prosecutor to lead the investigation. He may use policemen for interrogation hearings, but not officers from the district where the policeman complained against is employed. It is further laid down that the policeman who conducts the hearing must be superior in rank to the one interrogated.

The public prosecutor may, and sometimes even must, take an active part in the investigation. In actual practice he often interrogates the policeman complained against and sometimes also key witnesses. When the investigation is completed the public prosecutor decides what action to take.

Assault is a criminal offence, and if there is strong evidence that assault has been committed the prosecutor must initiate criminal proceedings in an ordinary court of law. If assault or any other criminal offence cannot be proven, the prosecutor will not take court action. It may be, however, that there are reasons to initiate disciplinary proceedings against the policeman; that is, when his behaviour, without amounting to a criminal offence, does not meet the standards demanded of a policeman. Disciplinary proceedings against policemen are, with a few exceptions, handled by the County Administration Board, with the county chief of police acting as prosecutor.

Regardless of the action taken the public prosecutor, who has been in charge of the proceedings from the outset, must inform the lay members of the Local Police Board of the outcome. If they are dissatisfied (for example, if they are of the opinion that the investigation conducted was not thorough enough) they can bring the matter to the attention of a higher prosecutor or of the Ombudsman, who may then take command.

So far I have presumed that the complaint was addressed to the police, as most complaints actually are, even though the target is a policeman. The complaint can equally well be addressed to a public prosecutor and the procedure would then be essentially the same as that now outlined. Sometimes the complainant takes his case to the Parliamentary Ombudsman instead. Usually the Ombudsman demands that the police investigate the matter and then report to him. If the Ombudsman is not satisfied with the investigation he can let a member of his own staff make further enquiries.

It also happens, although not so often, that the whole investigation is carried out by the Ombudsman's staff. The Ombudsman can act as a prosecutor, himself, but usually he orders a public prosecutor to take the matter to court, if the Ombudsman deems that criminal proceedings should be resorted to. The Ombudsman may also initiate disciplinary proceedings.

It should be noted that it is only in a very few cases that the Ombudsman finds court proceedings or disciplinary measures necessary. In the period from January 1, 1976 to June 30, 1983 the Ombudsman initiated court proceedings against policemen on only four occasions. No disciplinary proceedings were opened against policemen during that time. In most cases, where the Ombudsman finds the complaint made out, he will confine himself to express criticism of the action taken and to recommend that measures be taken to prevent similar occurrences in the future.

So much for the present state of affairs. The Commission that reported in 1984 did not propose any revolutionary changes, yet they made a number of recommendations that are of some interest and which may or

may not be followed. One was that the lay members of the Local Police Boards should have a real insight in the investigations while they are being carried out and not, as now, be informed only when the case is settled.

Another proposal, which may prove controversial, was that the Ombudsman should survey and check all investigations made about alleged police brutality and that he should have the right to take over an investigation conducted by the police. The Commission further recommended that there should be set up a central disciplinary board which should take over the task to hear disciplinary charges against policemen.

I cannot predict what will be the outcome of these recommendations. As I said, the recommendation that the Ombudsman should be given a more active role in police cases is likely to become controversial. Personally, I am not in favour of it. In my view the Ombudsman should not be used as a cog in the ordinary administration of the country. Rather, he should be an outside observer who intervenes when the ordinary machinery fails to work properly. On this point I disagree with the present Ombudsman in Sweden charged with the supervision of the police. I know he is willing to assume the extra burden that the Commission wants to impose upon him.

In all fairness I must concede that in former years we had a system where the Ombudsman was statute-bound to especially supervise a few particular branches of the administration and there played the role of a sole supervisor. In those times, however, the caseload of the Ombudsman was not nearly as large as it is now. Today many think it would be a good idea to reduce the number of Ombudsmen, who now number four. A Commission has recently

recommended that such a reduction be made. That is, that there should be only one single Ombudsman. Parliament is expected to take a decision on this question early next year. If the recommendation is followed, the Ombudsman cannot possibly play such a prominent role in police investigations as was proposed in 1984.

PART III

PANEL DISCUSSION: STANDARDS OF POLICING

III. PANEL DISCUSSION: STANDARDS OF POLICING

A. Wesley Pomeroy, Director, Metro-Dade Independent Review Panel (former Chief of Police, Berkeley, California)

It is a very real pleasure to have the opportunity to moderate this panel and to participate in this conference. I am proud to be part of you and already regard you, rather presumptuously, as colleagues of mine, with pride. There is a real dynamic feeling in this room and at the informal workshop discussions we have had.

The stimulus for this panel came from a very fine article, published in March 1982 in the Atlantic Monthly, authored by James Q. Wilson and George Kelling, "Broken Windows". The focus of the article emphasized how the police have to get close to the community. How they have to respond to community concerns in order to do their job well. I think most of us in this room will agree with that.

In the article they raised a very provocative issue; it has to do with the police getting so close to the community that they begin to respond to community standards, to community wishes and desires and biases, even though it may require them to be involved in actions which are maybe outside the law, maybe even illegal. Now, the authors do not advocate that, but they do raise the issue and others have written on it in ways to indicate that they have interpreted Wilson and Kelling as saying that. Some of it has been very acrimonious and phlegmatic, to the extent that they have been accused of actively supporting police homocides and that kind of thing.

Very respected researchers and academicians are beginning to say, "That may not be a bad idea. The police

perhaps ought to be judged by what they do in terms of effective order or maintenance of the community. When you hear the community wanted them to act that way, then you ought not to criticize the police for doing it, even though it may be outside the law." That is the way the debate is going -- a sentiment that perhaps community rights should prevail over individual rights.

A very respected writer has said,

> "...what order maintenance means is the suppression of a whole range of citizen behaviours that community respectables find disruptive, annoying or offensive, even though those behaviours violate no laws."

We might agree that certain behaviour makes one person more undesirable than another, but how do we ensure that age, skin colour, national origin or harmless mannerisms will not also become the basis for distinguishing the undesirables from the desirables? How do we ensure, in short, that the police do not become the agents of neighbourhood bigotry?

We, as judgers and evaluators of police behaviour, must set identifiable criteria by which we judge that behaviour. I am very concerned by any suggestion that illegal or extra-legal force, employed by police officers, be accepted as legitimate. Police simply cannot be allowed to use any means, under any circumstances, that are outside the law.

Men and women who are police officers have absolutely no identity or power, as police officers, outside the law. Police officers are creatures of law. Their powers are prescribed and limited by law and if they operate outside the law they become criminals, just as everyone else does,

and they should be punished. It can be argued, additionally, that they are more deserving of punishment than others because they assume a higher level of responsibility to operate within the law when they become police officers.

As responsible members of society we must continue to work to reinforce the rule of law. It is at the central core of the values upon which our free societies are established. It is essential and non-negotiable, in my view, that its integrity be absolute. We must make certain that those who have the responsibility to enforce the law obey the law, in order to preserve its integrity.

B. Dr. Egon Bittner, Brandeis University

The conference program, which you also have, asks, "should law enforcement officers be condoned if they use extra-legal means to achieve community objectives?" "Extra-legal" is a zebra here. What we need to be asking is "illegal" means and I'll speak of illegal means. "Extra-legal" is something that either the law neither permits nor prohibits and I have something to say about that at the end.

In so far as "illegal" means are concerned, my answer is, no, of course not. I think there can hardly be any debate about that.

Sometimes you hear people say, "well, yes of course" and they begin equivocating. They are talking about mere technicalities and you don't have to pay attention to mere technicalities. When they talk about legal uncertainties who knows? Even the Supreme Court cannot make up its mind, so what do you expect a patrolman to do? When we talk about insignificant cutting of corners, you cannot avoid that. We are all human. But there is no way of interpreting the police mandate -- in North America or any place else in the world -- as including the licence to employ illegal means.

Having disposed of that point, I move to the first thought in the program -- "What the Community Wants vs. What the Law Allows" -- and that complicates the problem apparently. Now we are asked whether the police officer who, after all, is a public servant, may transgress to follow what apparently are the dictates of his bosses. No longer is there a question of whether or not they may transgress for those infinite variety of personal reasons that anybody transgresses, but rather for the apparently weighty reason of the public demand to achieve certain aims, one way or the other.

The occasion under which this arises is the pressure of circumstances - things are happening in the community. Circumstances occur that are said to be intolerable, unbearable. The community -- the people -- are moved by fear, by anger, by resentment, by indignation. The people are prepared to lash out against whoever causes injury or insult to them; whoever disrupts the communal peace, safety, decency and decorum. Under these circumstances, in response to a cry to do something, may the police act illegally? Is it right under these circumstances that "the cops" should get on the ball and get the drug pedlars and the pimps and the muggers and rioters off the street? It is right that they get done somehow or another with all that God forsaken fraternity and sorority of evil, in whatever way will work?

The community is the boss. It pays the bills. But, as far as I am concerned, I am community, too. As far as I am concerned the answer to that question is still uncomplicated and incontrovertible. However strong the pressures may be, momentarily, there still is no way the police mandate may be said to contain a licence to act illegally.

The reason why I say that is not because the community is not entitled to get what it asks for, but precisely because it is so entitled. It only takes a moment of reflection for you to realize that the law, too, is an expression of the public will. It, too, is the voice of the community. It is the voice of the community that has come to its senses. It is the voice of the community that got hold of itself. It is the voice of the community that knows or has learned over the course of its history, that public sentiment, stirred by insult or injury, can boil over unpredictably and uncontrollably. It is the voice of the community that, precisely for this reason, because of that realization, has pledged itself to pursue its lasting aspirations to justice, decency and order.

To live within the binding constraints of the law--that is what the community wants too. Any law enforcement officer worth his salt will know which voice to heed. One is the voice of the moment and the other is the voice of stability. By working within the bounds of the law, by not transgressing, the officer does what the community wants, rather than opposing it.

The concern for legality in policing is so central and important an issue that other standards of policing are sometimes forgotten. I would like to conclude by mentioning another aspect of the overall adequacy of policing -- another standard for which public oversight is also necessary. I am talking about a neglected aspect of policing. I am projecting forward to the desire or demand for the wholesale transformation of the meaning of police work as an occupation and as a public trust. I am talking about a transformation that would be based on an unflinching recognition of the seriousness, complexity and importance of that vocation.

Contrary to public assumption, police work is not a lower grade occupation. It is not an occupation that recruits its people from among the least talented, the least aspiring. Quite to the contrary, it is one of the most demanding occupations right now. The transformation I am talking about would be a transformation that would move police work away from the sense that associates it with dash and with daring-do, with adventure and the like. It would be a transformation that would move it in the direction of a craft, a profession; that would move it in the direction of things associated with prudence, consideration, skill, knowledge, judgement, predictability and economizing. In short, it would move it in the direction of the unheroic and the unromantic ideal of workmanship.

I want to emphasize it now. It is a hobby-horse of mine. I can never speak of police without mentioning it. I have an abiding faith that if you could, in fact, change police work into that kind of an occupation, that if you could get that transformation started, you would get police officers that would need far less supervision with regard to standards of legality.

I want to have police officers that would approach a police problem in the way in which a dentist approaches an impacted tooth or an engineer approaches a material stress problem - as a work task. If you get that, my guess is, soon you will not have to worry whether the police officer has to employ illegal means, no more than you have to worry about the dentist or the engineer.

C. Professor Alan Grant, Osgoode Hall Law School (former Chief Inspector with the London (U.K.) Metropolitan Police)

I have, as you have heard, spent fifteen years inside the police force and the last fifteen years outside of it. Maybe now I have begun to get some balance on the kind of problems which your international association has set itself.

Looking at these questions about the community and extra-legal approaches my thought is not just that I'm the community too, and so are you, but that the street gangs are also the community. The people who buy recreational drugs are the community. The people who pay the prostitutes are the community. If you listen to the Ombudsman from New South Wales you will see that many of the problems they are dealing with have to do with the problem of making the police deal with laws which are totally out of line with what the public wants. The public does want to gamble on sporting events (still, believe it or not, totally illegal in Canada) but some kind of unholy alliance between the Church and the Mafia keeps it all illegal.

The problem that creates for the police is that they become the whipping boy. Society refuses to face up to the total hypocrisy of saying that there is an entertainment dollar out there. The people spending the entertainment dollar only make the following distinction between legal and illegal entertainments -- they know there is a crime tariff on the illegal ones and they have to pay more than what they'd have to pay if, in fact, the thing was legal and regulated.

Take my own experience in Britain. When I was a young man in the police force in Britain, betting on sporting

events was totally illegal. We had to dress up in paper hats and funny noses and pretend we were not policemen in order to arrest street bookmakers who, within a year, were the very people granted a licence to run the legal betting shops.

Today, because of the effects of non-control on anti-trust in Britain, gambling is really run by about three big bookmakers, who own all of the licences that they bought up from all the little operators. They are all in blue chip stock investments in the London Stock Exchange. So the sort of stuff, that as a young man I chased around thinking I was doing my job to enforce (which were nonsensical and totally ignored by everyone), is now the very thing on which people gamble. That is, people now buy stocks and shares in legal betting operations. What does that take me to?

It takes me to this. I do not think, with respect to what has been said already, that you can simply talk about the law as repesenting the community in the sane mode. The law does not represent the community in the sane mode; the law represents that which has been able to get onto the statute book, but is often totally ignored by the public.

The police are often unwillingly thrown in there, paying the price, in effect, of society's hypocrisy in keeping and maintaining a lot of thoroughly consensual conduct illegal. My suggestion to you is that there will be greater police divergence, in the way of what you would call perfect behaviour, in direct proportion to the extent to which the statutes of the State are out of line with what the public, in fact, is doing.

But I do not want to just leave you with the thought that cleaning up the legislative book would solve some of

the problems. I would like to talk now about police use of extra-legal or illegal means. I think we have have to face that it is true, that police do break the law and do break it all the time. They have to, to some extent.

Think about it for a moment. We all come from different jurisdictions. Where in your law does it expressly say the police can break the law in order to enforce the law? I can think of one which a lot of States and several Provinces have. It expressly says in the Highway Traffic Act, or its equivalent, that police can speed in order to catch a speeder.

O.K. Well, what about dangerous driving? If a policeman is driving dangerously on the wrong side of the road at 120 miles per hour and hits a car coming the other way, he can be convicted of causing death by criminal negligence or dangerous driving (as it was proved in this Province just a few days ago) if, in fact, he is rushing off to have a cup of coffee with a buddy. However, what if I change the facts and say, driving exactly the same way, in exactly the same manner, but he was attempting to overtake an armed robber that he had followed right from the bank, with the loot in the back of the car? Are we saying that it is not dangerous driving? Or are we saying it was probably dangerous driving (certainly the widow of the guy coming the other way thinks it was dangerous driving) but the prosecutor can exercise his discretion by not prosecuting? There are plenty of occasions when, because of prosecutorial discretion, that which could have been, in some objective sense, prosecuted as a crime, is not, because the good of pursuing a dangerous armed robber, in flight from a bank, overcomes the need to prosecute the police driver.

This is the police in their reactive role. A crime has been committed. They then set about to investigate it and

identify the culprit. What about the police in their proactive role? What about the police when, again, they have to police consensual crime? What about the guy who is on the undercover operation? What if he is in a State or Province where it says, when you book into a hotel you are supposed to give your name and address and sign the register in your own name? What does he do? Put down his real name there? You know he is going to put down a false name and address.

What about an undercover officer who is meeting three co-conspirators? The three guys get in a car with him. They are driving along and a highway patrolman is waiting for them. "Do you know your back light is out sir?" He doesn't know the guy is a undercover cop. "Can I see your driving licence? What is your name?" What is he going to say, "Constable 323 undercover"? He is going to give the name he gives those guys, "Joe Blow". And if he is carrying a driving licence in the name of Joe Blow, where the hell did he get that? Issued by the Minister of Transportation and Communications. There are a lot of offences being committed here to give this guy the background. What about the car he is driving? Can we look that up and see it belongs to Metropolitan Toronto Vice Section? Surely not. It is going to belong to Joe Blow from Kokomo.

The point is, these things are going on. So far everyone is saying, "Yeah, I see that, but you know they are sort of minor matters." We would say in Canada, "That is a Provincial matter; it is not a crime." But move it up a little. Now my undercover man is in the factory. The factory has been ripped off for $15,000 worth of inventory per month and he is in there to see who is doing it. Of course he does not go in and say, "I am Constable 302, they just pulled me out of the Academy because I do not look like

a cop." He goes in again under an entirely false situation. Do you think he is going to get to the top of who is stealing all this stuff unless he engages in some of the thefts himself? Of course not. He is going to do it.

The next thing we hear is, "You know, until that guy joined the factory line theft around here was just pilfering, but once we had a few meetings with that guy he got us so well-organized that this became really big." Soon you find out that he is the main instigator. He is down the slippery slope. But right up to that point we are all happily nodding and saying, "Hey, but he is doing that for a good purpose." There again, it is really essentially the prosecutor who makes the choice not to prosecute in those cases.

I will just try to leave you with three thoughts in this area. You have the job of looking at the police. Do the police the favour of getting to know more about them and their function. Every study of the police shows that 80 percent of their activities are service functions -- nothing to do with direct prevention, direct enforcement. Law enforcement is only a small aspect of policing.

Second of all, outdated laws put the police into ludicrous situations and you are going to have to oversee not just the impropriety of individual officers, but the gross hypocrisy of the society that has appointed them.

Thirdly, time and time again that slippery slope of proactive police involvement will drop you off at different points, saying, "I think that that is O.K. but I don't think that is." Offences are, of course, committed, especially in that proactive area of crime. I do not think it is an easy one to solve. I have not tried to solve it today. I have

just tried to open your eyes to some of the realities of certain aspects of police work that do involve the police in committing offences.

D. William A. Geller, American Bar Foundation

The answer to the question whether police should be condoned if they use extra-legal means to achieve community objectives, it seems to me, depends on what one means by "extra-legal." If one means illegal (that is, specifically prohibited, as with the third degree) I take it the formal response, important for symbolic reasons, must be a simple "no", except in life-and-death situations, where the traditional justification of "necessity" protects a person who commits one wrong to avert a greater calamity. But if by "extra-legal" one means, if you will, "a-legal" (that is, not addressed by existing legal pronouncements), then attention must turn to the task of determining whether the conduct in question complies with the spirit of the law. The questions I wish to touch on are how one begins to think about the legality of police behavior that is carried out in the happy abyss between legal pronouncements and what the role of local community standards should be in making the determination of legality.

What types of police behavior are largely unnoticed by law--statutes, ordinances, even police department administrative regulations? Much of what James Q. Wilson and George Kelling termed "order maintenance" in their celebrated "Broken Windows" article in the Atlantic Monthly falls in this category. Included, for example, would be streetcorner arbitration of minor disputes among citizens, orders to groups of toughlooking youth congregating in public places to "move along" or disperse even though they have not committed any clear law violation, involuntary separation (without arrest) of feuding spouses, involuntary transportation (without arrest) of an inebriate to his home, cajoling, and the like. For the most part, these are types of police conduct that do not currently require subsequent

paperwork by the involved officers. I leave entirely outside this discussion the vast array of noncoercive activities engaged in by police, such as emergency transportation of sick people to hospitals, crime prevention education, community profiling, etc.

How is one--more particularly, how is a civilian oversight body--to think about the justifiability of coercive police conduct that falls in this uncharted legal territory? I would like to propose that local community standards, reflecting cultural, economic, and socio-political values and conditions, are one relevant source of guidance on this question. Such factors are relevant because, at bottom, the legality of contested police coercion typically is going to depend on whether the police conduct was "reasonable" in furtherance of legitimate government objectives. What is reasonable in one setting may be unreasonable in another. The tolerable noise level for conversations in Times Square will be several decibels above that for arguments in a sleepy suburban village green. As the American courts have noted in questions involving alleged pornography, local sensibilities will play a major role in separating protected from illicit expression. In search and seizure activities, the police are entitled to consider the crime level of the geographic area they are entering in determining what behaviors by a suspect are sufficiently suspicious to justify intrusion on his privacy. Thus, a stop and search that is reasonable on one street-corner may be unreasonable on another.

To be sure, there are limits to the use of local variations in defining the boundaries of police discretion. For example, community preferences that fly in the face of clear and consequential legal rules cannot prevail. Thus, for example, a community in the American South dominated by

Ku Klux Klansmen should not succeed in using its police to maintain the racial and ethnic purity of its public school population. Nor should a well-integrated community's wish that police take shortcuts through the Bill of Rights and administer preadjudicatory punishment to suspected law-breakers be fulfilled.

But what about differential or selective enforcement of laws? Should cultural preferences and characteristics guide police decisionmaking? Ray Davis, police chief in Santa Ana, California, whose community is predominantly Chicano, made the following argument in a book I've just finished editing on police leadership:

> Care should be taken in selecting an approach for controlling activity associated with particular cultural subgroups. Well-meaning efforts often destroy a relationship because we have ignored the fact that people's backgrounds lead them to perceive actions in different ways. One might employ an educational effort to gain willing compliance with laws against cockfighting, for instance, instead of mounting an undercover investigation to arrest as many people as possible. In fashioning enforcement programs, the chief must be mindful of different levels of visibility of certain vice activities in upper-income sectors of the community and in lower-income and certain ethnic sectors. Police in America continue to close their eyes to the "friendly card games" in politically powerful fraternal clubs and direct crackdowns on gambling in social clubs of poor ethnic communities. Such enforcement patterns, of course, are not difficult to understand. An arrest quota for the vice squad many times can misdirect police energies to the most easily attainable areas of enforcement, areas that lack political muscle. The chief and vice unit commander should recognize, however, that avoiding the "heat" in the short run will contribute to long-term problems for both the chief and the agency. This type of

> "tailoring" the police response announces to the community that the police are serving the power structure and not the people. Similarly, when police take action against individuals gathering in public parks or meeting in drive-ins because powerful people see such behavior as suspicious, if not dangerous, the police typically achieve nothing but a further rift within the community. One must understand that in certain ethnic groups social gathering in public places is part of the cultural heritage.

Sometimes the police are called to arbitrate clashes between entirely respectable group and individual preferences. These problems arise frequently when free expression and religious liberty are involved. For instance, the police would barely notice a photographer snapping pictures of people on the streets in Philadelphia. But move the scene six miles away, to the Amish settlement in Lancaster, Pennsylvania, and the photographer's conduct becomes extremely provocative to those concerned with order maintenance. The same is true in the Orthodox Jewish neighborhood of Mea She'arim in Jerusalem, where I remember being stoned by locals because, unintentionally, I offended their sensibilities by walking down a public street without covering my head. Female tourists whose clothing does not fully cover their arms meet the same fate. The infamous march of a small band of Neo-Nazis in my neighboring suburb of Skokie, Illinois, a few years back raised similar order maintenance problems for the police. Thus, one can hardly ignore community values and traditions in thinking about which police social control activities are reasonable.

Except in extreme cases, we know relatively little about what the community and its subgroups want by way of police order maintenance activities and very little about how those preferences measure up against individual liberties. And while we know even less about what civilian oversight bodies

actually do (with the exception of a helpful article on Canadian police boards by Phillip Stenning), I think civilian oversight bodies have a critical role to play in helping us learn a great deal more about these matters. They way in which civilian oversight bodies can be--and are already being--helpful will probably vary according to the formal and informal mandates, staff size, budget, political independence, and workload of the agencies. Some oversight bodies may be able to conduct or commission full-scale residential and commercial surveys of their communities; others may be able to go no further than advocating that other suitable resources (such as police departments, universities, community groups, the Justice Department's Community Relations Service, and the like) do so. A traditional police board or commission, which at least nominally is responsible for setting police department policy, approving the department's budget, and adjudicating administrative discipline cases, may more easily justify undertaking a fact-finding effort in terms of the board's scope of responsibility. On the other hand, most police boards, at least in the United States, have small full-time staffs and memberships composed of very busy pillars of the community, who, despite the best intentions, simply cannot devote concentrated time to profiling community attitudes in any sophisticated way. Yet, the Los Angeles Board of Police Commissioners stands as at least one example of a civilian oversight panel that a few years ago had the wherewithal to commission a competent, scholarly evaluation of one area of pressing concern--police use of deadly force. A complaint investigation agency, such as the Office of Professional Standards in the Chicago Police Department, might understandably blink in disbelief if one proposed that on top of managing its heavy docket of excessive force complaints, it should conduct community surveys.

As much as I appreciate the problems of enlarging the agenda of beleaguered civilian oversight agencies, nevertheless it seems to me that a clearer understanding of what one's own community residents want the police to do would, in the long run, simplify and enlighten the processing of individual cases or problems. As you well know, police excesses are not always the product of intentional wrongdoing--sometimes they emerge from officers' misperceptions of what is expected of them by the public. In some circumstances, police don't realize that the community is willing to be far more helpful in the detection and solution of crimes than at first appears. In many instances, the police, ensconced in patrol cars and rotated frequently from beat to beat, are not aware of and so of course fail to make full use of what Wilson and Kelling call the "informal social-control mechanisms of natural communities", including religious and social organizations, recreational programs, youth group leaders, business associations and the like. Occasionally, police perceptions of what a community's leading problems are differ from the priorities of residents--and experiences in several cities have suggested that if the police devoted at least some serious attention to legitimate community priorities (even if only remotely related to immediate crime problems), the police investment of time would pay dividends in better working conditions for the officers. Better information about the community might produce such disclosures and suggest such opportunities. As Chips Stewart, director of the U.S. Justice Department's National Institute of Justice, put it in my recent book, the point for the police--and for civilian oversight bodies--is to "work smarter, not harder."

No doubt, it will be difficult sometimes to determine "what the community wants." Even aside from some predictable differences between identifiable subgroups,

there may be an irksome ambivalence within homogenous groups. Norval Morris and Gordon Hawkins illustrated the point nicely in The Honest Politician's Guide to Crime Control. "There is no lack of logic," they wrote, "in the ghetto dweller's statement: 'I hate the police and we need more police here.'"

Besides identifying and assessing community attitudes and preferences, ideally I would see civilian oversight bodies conducting or at least promoting community education concerning what the police can and cannot legally, ethically, and practically be expected to do in response to public demands. There is not time to address in any detail questions about what the police as a practical matter are able to accomplish, but a few words may be in order. Empirical research about "what works" and "what doesn't work" in American policing is relatively new, highly uneven in quality, frequently controversial and generally depressing in its findings. For example, serious questions have been raised by research about the efficacy of such traditional police techniques as preventive patrol, rapid response to calls for service, detective work and crime labs. Such doubts shake the bedrock of current police crime-fighting strategy. While many people within and outside of policing retain faith in such traditional law enforcement techniques, for a good number of us this is one of those situations in which, "if you're not confused, you're just not thinking clearly." On the other hand, some encouraging findings are starting to emerge about the usefulness of foot patrol, aggressive policing of public transit vehicles and genuine police-community power sharing in reducing citizen fear of crime, if not actual crime.

If the public's expectations of the police are refined (involving both expansion of some expectations and

contraction of others), some pressure may be appropriately taken off the complaint review process - and off the police and the community. A citizenry that believes its police are leveling with and attempting to collaborate with them may well be more inclined to give police the benefit of the doubt in "close" cases. While the experience is still too new to be clear, it seems that civilian complaints about police misconduct may be going down in ghetto neighborhoods of American cities with black mayors and/or black police chiefs. The emergence of this cadre of black civic officials presents a symbolic if not real indication of closer affinity between those who enforce the government's will and those against whom it is disproportionately enforced. There is strength in the suggestion that segments of Philadelphia's black community would have rioted if, under right-wing Mayor Frank Rizzo, the police had "bombed" a safe house and set an entire city block on fire.

What I'm hoping more civilian oversight bodies will be able to do or at least be able to advocate that others do can be summarized briefly:

- Identify community expectations with respect to police order maintenance activities, specifying what the community sees as the disorder problems, what it wants the police to do in response, and how varied these perceptions and preferences are in different sectors of the community.

- Identify some of the "informal social-control mechanisms of natural communities" of which the police may be unaware.

- Explore what the police can do to foster these informal controls.

- Assess the legality and propriety of the various community expectations.

- Examine the capacity and willingness of the police to meet the legal and proper demands of the public.

- Help the police devise and refine effective, legal responses to the problems of public disorder and public fear. The more useful, lawful tactics a police officer has in his repertoire, the less need he or she may feel to resort to questionable methods of "getting the job done."

- Educate the public and the police concerning the legitimacy, illegitimacy, and feasibility of various community preferences concerning police conduct.

- Help police departments develop and improve criteria--although not necessarily highly formalistic criteria--for supervising, evaluating, rewarding and punishing police order maintenance activities. Organizational reforms, prompted by historic corruption, partisan political influence, inefficiency, laziness and other factors, have left most police agencies unable or unwilling to measure their performance by any yardstick other than arrests and crime rates.

- And, finally, use these civilian oversight agency initiatives to leverage other local resources in the public and private sectors to aid in all these imposing tasks. During this era of retrenchment, new public-private partnerships may hold as much promise for expanding the capacities of civilian oversight as they do for enlarging the service potential of the police.

In all these matters civilian oversight workers will, of course, have to walk the familiar thin line between rightful community control of the police and excessive intrusion on professional police decisionmaking. The latter has the doubly negative effect of discrediting the oversight function in the eyes of the police and permitting them, to the public's detriment, to abdicate responsibility for first-line scrutiny of their own conduct. Chief Ray Davis, one of the strongest adherents and practitioners in American policing of genuine power sharing between police departments and community members, has cautioned against "a blind pilgrimmage to the temples of community control." (There is truth in the dictum that, to lead people, at times one has to turn his or her back on them.) Equally persuasive admonitions have been made at this conference concerning the risks of excessive deference to police expertise by oversight panels. I tell you, in closing, as I have told many a police administrator, that I'm awed by the difficulty of your job. If being outside the fray gives me a useful perspective, I'm also well aware that it gives me many fewer sleepless nights. Thank you for the opportunity to share some thoughts at this impressive assemblage.

E. Ramsey Clark, former United States Attorney General

Let me say first, as simply as I can, how important it is for me to be with you. How reassuring - to use a word I noticed our Chief from Miami likes - it is to know you're here and to watch your interest and enthusiasm for what you are doing. I love the complexion of the room, too! I am not as old as I look. No one should live that long. But I have been around a long, long time and we were lily-white in the old days and accomplished nothing and now "we shall overcome".

What I want to say is pretty hard to communicate. I'll begin with an observation by the poet, Pinder, 600 B.C., who observed that "culture is Lord of everything; of mortals and immortals, King". The historian Herodotus found, as the dominant fact of history, that we are captives of our culture; that it contained all of the human aspects of our environment - ancient, present - and the limit of our prospects; that for most it's as immutable as the mountains and the rivers and the stars. Our challenge is to stretch our imaginations beyond our culture, because until we can do that we cannot know ourselves.

You know how timid it is - and I say this to the people who bear the brunt of all the wildness that's involved in the issue of "police-civilian review boards" (as we used to call them in New York, as an early non-beginning) - how very timid it is, that we talk about civilian oversight of law enforcement. Dare we walk on the beach, roll up our pants and eat a peach? Dare we permit the people to have some say about how they are policed? This idea of culture.

I went to the University of Chicago long before Mr. Geller and in those days we had what was called "The

Great Books Program". God, it was exciting! All these great books. Every great book, we bought. We indexed them and studied them. When I came out of government the Encyclopaedia Britannica, which is run by the University of Chicago, more or less, had a continuing annual volume called "The Great Ideas Today" and they asked me to write on the idea of a "civil" police. Not civilian oversight. A "civil" police - the thing itself is civil - not merely observed from the safe and non-interferring distance, preaching but not practicing. Well, I went back through our indexes and I went back through all the great books, which included the Bible and Aristotle and Plato, and came on up through the ages with Aquinus and Freud and all the rest, and found nothing. Nothing!

No idea for a "civil" police. I pondered why for a while, although that's a subsidiary question, and came to some tentative conclusions that it was too hot to handle. Too close to home; too many imponderables you can't really know or decide. But how sad and absurd that all these intellects through all these ages would wrestle with these weighty problems of politics and law and war and peace and never come to grips with the flash-point. We talked constantly about a free society and the horrors of a Police State, but we failed to recognize that the real measure is what the police do, in fact. For all your Constitutions and all your beautiful concepts it's what happens on the street, between the police and the people, that determines how free and how equal your people are.

History, necessity, causes us to approach the problem with what today is often called a para-military concept. The use of force. The enforcer with two techniques - violence and segregation. Both, in and of themselves, awful phenomena that have never worked. And can't. You are,

hopefully, the camel's nose, as far as I'm concerned, coming into the tent to help us see, in this most important practical measure of individual freedom and human dignity, how the police act. We, the people, determine the police function. It's funny. We are so trapped. I started to say "of, by and for the people". I mean we recognize that as to most aspects of government. We quote Parker, who Lincoln quoted, but when it comes to the police - isolated and segregated enforcers - we can create a political firestorm by merely suggesting, in many places where fear runs high, that perhaps, just perhaps, we should be so bold as to permit police conduct to tentatively and in a very limited fashion be reviewed by we, the people.

Is it conceivable that the peer enforcer, with no other power, can be a friend? Analogies are odious, the poet said, but if a fourteen year-old will talk about - and he was obviously a "leopard", God bless him - the zoo, then I'll talk about parent-teacher and a few other analogies. Imagine a parent that provided nothing for the child but the toolshed. Do we believe that love of parent is possible? Is it because of the toolshed that we love the parent or because of the caring, in sickness and in health, the love, the help forming our own character, changing the diapers and getting us a measles vaccination and all the rest? Suppose the teacher had nothing but the rod? Whammy on the knuckles! No books, no blackboard, no inspiration, no pricking of our curiosity or expansion of our imagination. Just the rod. We think schools are wild now and for some that is about all there is there. Think what it would be if that's the way it was?

A "civil" concept of police must recognize the whole function, in my opinion, as a human service. A human service of vast importance, always, but never more so than

now and in the years ahead. We have known turbulence - Wes is tired of hearing me talk about turbulence, as I have for many years - but the wildness ahead is unprecedented. A billion more people on earth in ten years and three-fourths born desperately poor, having to be almost constantly hungry. Five million infants a year starving. Starving! And a multiple of that, suffering the ravages of malnutrition, and no tortilla curtain can keep the teaming hordes from our peaceful shores. Think of the beautiful bodies of the Haitians on the beaches of Lauderdale. Can any force - can Baby-Doc - contain all of that human energy? It is not possible and who would accept it. Look at the riots in England and Germany and think and ache about South Africa, where apartheid is constitutionally imbedded. A crime against humanity and any standard of decency. Constitutionally imbedded and totally unacceptable to all sentient beings. And we have our apartheids and our petty-apartheids, deeply ingrained in our culture and in our character, and we have to address them.

Do you really think that in this teeming society, with all of its instabilities, mere force and segregation could possibly suffice to keep the leopards from getting restless? We all have our favourite statistics. One from the National Institute of Mental Health is that 10 percent of the population in the United States will suffer, during their lifetime, protracted periods of severe mental illness. "Unable to function", they define it, trying to make it understandable and failing. Unable to function in one or more of five essential interpersonal relationships. Pushing people down in class or grabbing fruit off the stand or worse. Ten percent - a multitude - don't act like we want them to. Clubs and guns and handcuffs and prison bars are going to handle that? We need a service, deeply integrated among all the peoples, understanding their needs, with provisions or reference points to help solve them.

Alcoholism, maybe 12 million people; drug addiction, mental retardation, 6 million in the United States. The children of the poor. It took a very wealthy President to find that out, because chance brought him a retarded sister - rare among the rich - and he cared. But within our prison systems overwhelmingly - six times their numbers in the total population - you find retarded people. Is there something different about them? They are not quite like you and I - neither of us being too sure about the other, for that matter. They were the children of the poor. They didn't find help or love in the society. They couldn't cope and our answer was confinement, after they had hurt a bunch of people. They, like you or I, can become dangerous brutes - "Don't push me too far!"

The idea that we would send an army to solve these problems tells us more about ourselves than we want to hear. We must provide what we call the police function today with as much capacity as is humanly possible to address these range of problems which, in many ways, are more fundamental than the problems of overcriminalization. God knows you can't make the world safe for hypocrisy, and we have to address that. If we would give those in police work a voice in our society that was different than Baretta's they might tell us something of what we need to know. If experience is the teacher, they have been there. But they have all too often - because of the way we have approached it, culturally - been so emotionalized and so isolated and so modelled into a definition that we have made of them, and for them, that they are mute. Our agents in an ignoble business.

Can you really hope for stability in a society where the vast majority of the people do not wilfully desire to conform with the norm? How? Who polices the police? Who watches the night watchman? And who protects the people

when the police violate the law? Civil war. That's all you've got.

So the imperative need is to expand beyond the frontier that you represent - the early warning that you so painfully know - to a "civil" concept of the total function. How else should democratic institutions perform such essential business? Of all places that we need the most passionate devotion to our abiding principles, the police come first. With lawyers it's too often just talk, as it is in court, long after the fact. It's the police confronting the current emotion, the wildness of the moment, the rage - I should say the rages. So many different rages, Miami can tell us, from so many different origins. If they are caught up in the current emotion then what happens to abiding principle? We really want, we really need - it may sound like a dream, but I have a dream too - we really want a "civil" police that can tell the Attorney General, "Our abiding principle does not permit that - there are no good Nazis". And tell the crowd in all its rage - "I love you but you cannot do this".

Remember why we are here. We seek to live a life of principle, and violence is the ultimate human degradation. I will not employ fear to have my way because I realize that fear is the ultimate tyrant. No police, no prison guard can ever confine you like your own fear. Some of the freest human spirits that ever lived had cracked skulls from police clubs and spent an adult life in prison. The stunning dignity and human strength of a Nelson Mandella should tell everyone what is possible. Resist fear!

This was surely one of the major messages of Martin Luther King Jr. He walked in the valley of the shadow of death. I mean that literally. I was the enforcer on the

march from Selma to Montgomery. You ought to have seen the police reports taken by officers who did not identify themselves. We had over 2,000 "known to police" - characters who had committed acts of racial violence - and they brought guns with them. They came from more than a dozen States, mostly south, but we had a few from the big cities too. And any one, given the chance and the moment, would have loved to murder Martin Luther King Jr. That's the horrifying truth and that's the falsity of all these theories of foreign conspiracy.

"We have met the enemy and they is us", Walt Kelly said, which is another way of saying, "there is no enemy; there is only us". These are our children, our brothers and our sisters. To try to dominate them by fear destroys our capacity to function because no one can respect that. Many may grovel. Many may lash back. But finally you will see those that have "overcome", who will walk in the valley of the shadow of death and fear no evil. And their faces, like Martin Luther King's, will manifest their perfect serenity.

I hope that what I have said doesn't seem too general. Attorneys General aren't Generals; they are generalists. Generalists are people that know less and less about more and more until they know nothing about everything, so I do qualify for the title, you'll agree. But when I talk about abiding principles I am talking about the laws as they ought to be.

I want a civilian police that believe, as passionately as I do, in fundamental human rights; that see their obligation to help our society fulfill those rights for each of us; that protect that member of a class of one, with whom no one stands, for her fundamental rights are as precious as yours and mine or the silent majority's. A human service

function of, by and for the people, responsible always directly to the people and willing to have it no other way - the joining in our common struggle to fulfill our human potential and recognizing that among peoples, as among nations, violence and segregation destroy.

Heroclitus told us that character is destiny. I'll accept that. We live in a world of chance, necessity and free will. Free will is our piece of the action - small but vital. Character determines how we exercise it. Let's dare to dream that no members of our society will aspire more devoutly to the free society that we say we are - and struggle more ardently for it - than the police, as integral members of our community.

Perhaps your real acronym ought to be COOLE. Got to fancy it up a little bit and law enforcement puts an "e" on the end. Civilian oversight - I'd rather have it civilian substance - of law enforcement. COOLE implies rational discipline in the midst of emotion. We want passion but we want it disciplined and rational and cool, and committed to the people of which we are all a part.

Thank you.

F. Audience Questions and Comments

Dave Fogel, Director, Chicago,
Office of Professional Standards

The overriding issue, I think, for the people in this room, is excessive force. It is the most sensitive issue affecting civilian oversight or anybody's oversight of police. The example of extra-legal police behaviour given by panelists omitted excessive force, except for what was implied about the Ombudsman's remarks. I would like to know from the panelists whether there are instances of excessive force or slight escalations from the legal moral which they believe can be condoned because of some community's idiosyncrasies.

Egon Bittner

I am concerned with the things that Dave mentioned, namely, battery and assault and homocide, perjury, conspiracy, bribery and those things that are unequivocally criminal and it is obvious to me that if we are going to have citizen's oversight, we will have to focus on that. Obviously, this is a subject that we need to put at the centre of our deliberations.

Ramsey Clark

This extreme form of violence, the use of deadly force. The first need is consensus on what constitutes proper use and there is no - in the United States, or in the world community - consensus. I would propose and urge and lobby for many years for the limitation of the use of deadly force to what is necessary under emergency circumstances to save life, and for no other use. As Attorney General I made our chief civil rights priority - higher than voting, public accommodations, employment, everything - prosecution of

police who have violated the law, and the gravest offence is the use of excessive force, and the gravest use of excessive force is deadly force.

We cannot blanket the meaning of the death penalty. I know that is a difficult issue and many think best left unmentioned. In the United States we have got 1,600 people on death row today. If we executed one person every day, at the rate we are putting them on death row, which is about 250 a year, we wouldn't get rid of our backlog this century. Poor Florida has caused its Governor to become the chief executioner of the United States, practically. We have a law enforcement organization for the abolition of capital punishment. It has got a lot of fine and very experienced people in it. I would pose that I opposed capital punishment as Attorney General. Sadly, I remain the only one in history. We had no executions in the United States for ten years, until Gilmore in 1977. We have had no federal executions in 22 years. That is a part of deadly force. It implies that you can solve problems by killing people. Just as suicide and murder and war are genocide, there are no circumstances, in my judgement, under which deadly force can ever be justified. Any one using it should be prosecuted, except where it is clearly necessary under the circumstances to save life, and then the minimum use possible, only, can be justified.

Alan Grant

I would like to make just a couple of brief comments about garden variety use of force. In operational police work it happens quite often. For example, a prisoner with three police officers will hit one of them in the face. The other two will grab him and the one hit will hit him back because, as many of you will say, that will teach him never to hit another police officer.

I have had command officers under me tell me that they told the troops that, and then argue with me about the justification of saying it. It gets down to the hard issues. So you play waffle-face with the screen in the back of the patrol car. You stop quickly so the handcuffed prisoner behind you will smash his face against the screen. O.K. Nobody can prove anything. You get to the point that this happens often. Or the cuffs are squeezed down an extra notch. That is excessive force. Or the kind of things where you will grab someone who is completely helpless and throw them up against the patrol car. I am not making this up because I have been cop for a long time too.

They are hard to reach and the only way that I know how to reach it is to stop talking about training and talk about practical application of how the laws are to be enforced. Good police leadership can deal with the situation by making it so that the officers understand, and are proud of the fact, that they are the only ones out there who protect the Constitutional rights. We must change our whole approach toward how we orient police officers, from the time they are rookies, so that the Constitution is not seen as some kind of nice thing that you talk about and the courts are not seen as entities that interfere with the "real law", but that the law is what the courts say it is. Teach them and have them accept the responsibility of being the defenders of the Constitution. They are the only ones, and it takes a commitment to do that. Ramsey was talking about a dream of transformation. I think it could be done if we really wanted to do it, instead of putting a lot of money into computers and better guns and all of that sort of thing. And I do not deny the need of them. I understand the practicality of police work.

William Geller

I think that a police executive from St. Louis captured for me, in very simple eloquence, what the right way is to approach police misconduct, whether it is excessive force, use of deadly force or corruption or whatever. It really fits situations where a police officer is being overly aggressive, whether in pursuit of community goals, police goals, legitimate goals, and the answer that this St. Louis police executive gave to a police officer like this was to say "We appreciate what you are trying to do, but you are going to have to find another way to do it."

What is important to me about that statement is that it has two elements, one of which is usually left out, either by the police looking at police misconduct or by the community looking at police misconduct. Frequently we tell the police they have to find another way to do it. We do not often give them the "Atta boy" portion of that comment. The most important part of that comment for me, though, is the question of helping to find another way to do it.

I think in the area of deadly force it is the universal rule that the police are to use deadly force only as a last resort. That becomes a cruel joke unless the police have something else meaningful to resort to. I think it is the obligation of the community, of you folks as the "hyphen in police-community relations," as Stephen Ginsberg said yesterday, and the police, to begin to get a lot smarter and a lot more inventive about identifying other ways to do it. They are not always technological ways. They have a lot to do with better cultural awareness and better and more sophisticated interpretation of what constitutes a sign of danger and what does not. I think the point I would like to leave you with is that civilian oversight bodies have a

crucial role to play in trying to help the police and community come together to forge more appropriate responses to these common problems.

Alan Grant

My remarks, of course, were aimed at pointing out that simply saying the police should never commit an offence under any circumstances does not reflect the fact, and I am pleased that we are now dealing with use of force and the use of deadly force because, of course, that is the high end of the scale on the continuum that I was working on. The question that the panel is asked however says, "What the community wants vs. what the law allows" and I think the inference is that somehow the law is more restrictive than what the community wants. If we think about all of our experiences in this field, are we justified in regarding the law as more restrictive? Surely why there are riots in Miami every now and again is because juries acquit. In other words, perhaps the law is remarkably tolerant of the use of force by police and the use of deadly force.

If you take the experience in this province of Ontario, about ten years ago we had the major newspaper of the country reporting about the allegedly improper use of force by some Metropolitan Toronto police officers. Mr. Justice Morand, who eventually became our Ombudsman, sat as a Royal Commissioner and identified seventeen of those allegations that needed further examination, and in the end - I forget the exact numbers now - but I am not far out when I say that he identified about seven or eight specific cases where, on the basis of the evidence, he recommended criminal charges be laid. Criminal charges were laid. Not a single conviction was registered by any jury in any of those cases. What this says goes back to the quotation from Ramsey "I

have searched for the enemy and the enemy is us". The law permits jury trials in those cases. We have, I think it is perfectly true to say, remarkably tolerant juries, whether they are coroner's juries or juries at trial, to police officers using force, including deadly force. Do any of you know of areas in the world where, when your regular police officers are charged with using deadly force, juries rush to convict? My experience is that juries rush to acquit. I think the assumption that the law is in some way a tighter controlling mechanism than what the red-necked community might demand in respect of violence, isn't true.

Lucy Edwards, Executive Director, Washington D.C., Civilian Complaint Review Board

I have a practical question. I am wondering whether any of the review boards, whether they are external or internal, have dared to follow a standard other than the general orders of the police department. That is , it is fine to handcuff a man in this way or it is fine to treat a person this way because this is what the department allows. Would it be appropriate, and have any of the review boards begun to move away from, what are accepted police standards in these areas?

Wesley Pomeroy

I don't know how that can be answered. I think probably examining the various reports themselves and talking to the people there. The only thing I have heard anyone say about that is Masterman. He certainly has his own standard and he has a special problem.

William Geller

There are vastly different opportunities, I think, for different kinds of oversight agencies to do that. I think that traditional police commissions which have, at least on paper, the responsibility to make policy for police departments, are negligent in their duty if they do not do that, and I think the experience is that they are negligent in their duty. But a review agency like the one that I am familiar with (OPS in the Chicago Police Department, whose job is investigation and a recommendation on disposition with respect to excessive force complaints) would really be stretching its mandate to use other than the police department standards.

Arnold Francis, Bermuda

I was very impressed, Mr. Chairman, with the statement by Dr. Egon Bittner that we should perhaps raise the level of police services to that of professionalism. The police, in my view, reflect what they consider to be the views and the policy of the dominant members of the society in which they serve. Thus, in the United Kingdom, where since the War there has been an increasingly multi-racial society, you have the police reflecting the views of the historical sectors of that society in their treatment of blacks, Pakistani's and so on. The classical of that is in South Africa. Indeed, you have some reflection of that in Bermuda.

Of course, frictions flow from that attitude. Thus, you will have a Birmingham riot and a Brixton riot and you will have riots in many cities in the United States, and it is because of this attitude of the police, based on the level of personnel that are recruited, who reflect the society in which they work.

Until we get a different type of person recruited as a police officer and a greater professionalism in the service, we are always going to have police not regarding themselves as reflecting the common consensus, but reflecting the will of the dominant members of society as they see it.

Dr. Reynaldo Pagtakhan, Winnipeg Police Commission

My question follows the remark about a situation where a Commission had found sufficient evidence to recommend that criminal charges be laid and a jury did not find a verdict of guilty. I would like to suggest that perhaps the Judge would only allow certain evidence to be heard and, therefore, the jury decision was based only on that evidence. I was reviewing one of the documents circulated in our kit about a law enforcement review board that can allow evidence and information to be heard, even if it is not admissable in a court of law. I think that factor has to be taken into account.

My question is, do we have a double standard of hearing evidence by the court and by the law enforcement review board? In other words, should we only receive evidence that a court of law would allow or should we receive evidence that the community wants us to receive? We have to reappraise ourselves.

Dr. Egon Bittner

May I make a comment about that. Yes, we do have a double standard and we ought to have a double standard. It is one thing to decide in a court of law whether a police officer committed a culpable crime for which he should be punished under the laws of homocide. That is one thing. It may very well be possible or impossible to do that. But

there is another criteria that ought to be brought into play. Namely, whether what he did on the street is good police work. Whether it stands to reason, whether it is effective, whether it is rational, whether it is practical or skilled, and all the rest of the things.

One of my continuous complaints is that we are not going to really move forward on this business about the unjustifiable use of excessive force, including deadly force, because of the police department's fear of civil litigation. That is why they go on and defend everybody and that is why they in fact impede criminal prosecution. At this moment I am not even very much concerned about criminal prosecutions. I am quite willing to let someone who might be potentially convictable go unconvicted, as long as I could get, within the police forces, the understanding that only a bumbling idiot would do it, who ought not to be a police officer in the first place.

Leonce Rhodes, Community Relations Specialist, Milwaukee Fire and Police Commission

My question has to do with the criteria of objectivity--with respect to law enforcement and complaint review panels also applying that same type of objectivity. I am concerned about how the social and ecomonic status of the complainant influences the application of objectivity. Individuals who have money are usually treated objectively. Those who are indigent and cannot afford it, regardless of race, do not have the same objectivity applied to them. I would like to get your reaction to that, based upon the subject that we have here, what the community wants. Presumably the community would want objectivity from its law enforcement officers and equal application of the law. However, the same is wanted by those who are poor, segregated etc. but they do not receive it. I would like to get your comments on that.

William Geller

If I may, I think objectivity in this context is perhaps not a very helpful concept. I think what you are talking about is a dynamic sense of implementation of a multiple set of subjectivities.

PART IV

DIFFERENT FORMS OF CIVILIAN OVERSIGHT: PANELS AND PAPERS

IV. DIFFERENT FORMS OF CIVILIAN OVERSIGHT: PANELS AND PAPERS

A. Australia

1. New South Wales

(see p. 35, George Masterman)

2. Western Australia

Eric Freeman, Parliamentary Commissioner for Administrative Investigations (Ombudsman)

Western Australia is vast in size with an area of over a million square miles. But the population is less than 1.4 million and 800,000 people live in or near Perth, the capital city. The State is rich in mineral resources and has mining towns in the outback areas. The police force comprises some 2,700 officers and the Commissioner of Police receives over 500 complaints a year about their conduct.

The traditional role of the Ombudsman in Australia has been to investigate complaints about defective administration in government departments, local authorities and statutory authorities, with only the power to recommend. Different views, however, have been expressed on additional roles for the Ombudsman.

As you have heard earlier, external review of the internal police investigations of complaints is in its experimental stages in both Australia and New Zealand. There is now Ombudsman involvement of various kinds over the federal police force and the police in the States of New South Wales, Western Australia, the Northern Territory and also in New Zealand. In contrast, in the State of Queensland, there is a Police Complaints Tribunal comprising a District Court judge, a magistrate and a police officer. In the State of South Australia a Public Complaints Authority has recently been established and it is likely

that a similar authority will be set up in the State of Victoria.

Now, George Masterman has problems which I hope are peculiar to the State of New South Wales. The New South Wales legislation, in my view, while workable, is not the most ideal one. It is complicated in formal procedure and the investigating officers, as you have heard, are short-term seconded police officers. I do not think this sits well with the public perception of an independent view. The Ombudsman also has the problem of being very restricted in delegation.

The background to my involvement in Western Australia is that when the office (which is the oldest in Australia) was established in 1971 it was proposed that the Ombudsman would have jurisdiction over matters of administration in the police department and also over complaints about individual police officers. After debate in Parliament the jurisdiction was limited to the administration of the police department.

Last year the government introduced a Bill to extend my jurisdiction to cover complaints about the conduct of police officers. The Bill was placed on a federal Act which had been in force since 1981. It was, in effect, a statutory code, setting out in detail the procedures for the receipt, investigation and handling of complaints by the Commissioner of Police about misconduct of all kinds, and the audit of such investigations by the Ombudsman.

The Bill met with considerable opposition from the Western Australian police union which, through media consultants, mounted an unprecedented campaign against it on television, radio and in the newspapers. By way of

illustration the television commercial ran daily for nearly two months. It showed a sledge-hammer marked "Ombudsman" knocking a brick wall down, with bricks flying in all directions. As the wall was demolished there appeared the most innocent and handsome policeman you have ever seen. He was seated and handcuffed. The words which were spoken were "Don't let this happen to your police officers - ask your local member of Parliament to vote against the Bill". The union conceded that it was not against Ombudsman involvement, but was opposed to the form of the Bill, which included provisions for the Commissioner of Police having to reach agreement with the Ombudsman on the type of action to be taken against the police officer, be it counselling, disciplinary proceedings or criminal proceedings.

The Bill was the subject of considerable debate in Parliament and while it passed the Lower House it was blocked in the Upper House where the government was outnumbered. In its place a simple amendment to the Ombudsman's Act was passed. It gives me power to investigate not only complaints against defective administration but also complaints about misconduct of police officers. It is so widely expressed that a police officer can also make a complaint concerning employment matters which affect that officer.

A specific provision prevents me from commencing my own investigation until the Commissioner of Police has first had a reasonable opportunity to conduct his investigation. "Reasonable opportunity" is, in effect, defined as 42 days from the date the Commissioner of Police receives the complaint. If he requires additional time he must obtain my consent. I have no involvement up to that point and if a complaint is made to me it will simply be recorded and passed on to the Commissioner of Police.

Unlike the defeated Bill, there is a complete absence of rules and procedures, except that the amendment is made subject to the Ombudsman's Act. The amendment has only just come into operation and procedures are now being set in place, so I stand before you as the most inexperienced Ombudsman dealing with police complaints.

But the Ombudsman's Act does make certain points clear. For example, the investigation will be conducted in private, but I can, in certain circumstances, go public. Secondly, to set the record straight, I have the power of a Royal Commission. I can require persons to appear before me, produce documents and answer questions. I cannot, however, require the officer complained about to do this, if he would have been privileged in civil or criminal proceedings. Any person involved in the investigation may be represented by counsel or otherwise, so the union can represent a police officer. I may not make an adverse comment on any person unless that person has been given an opportunity of being heard and his or her defence fairly set out in my report.

As you can see it is a system, an intricate system, of checks and balances. I also have "own-motion" power to commence an investigation without a complaint. I have the right to enter a police department's premises at any time and inspect records and call for files. If I am of the opinion that there has been misconduct I am required to inform the Commissioner of Police and the responsible Minister, but I have no further involvement as to the type of action which is to be taken by the Commissioner. I can require the Commissioner to make additional inquiries or I may conduct a separate investigation myself. In terms of the Ombudsman's Act I am, in effect, an officer of Parliament and I may report to Parliament at any time. If I make a recommendation which is not accepted by the

Commissioner of Police or the Minister I may inform the Premier and, if I do this, then I can table the report in both Houses of Parliament.

Parliament appropriates funds for the operation of the office and I do believe it is important that no matter who phones the office sufficient money is allocated to enable the appointment of sufficient staff of a high calibre. My staff should be at least as competent as the police officers they investigate; otherwise the credibility of my office will be at risk.

In conclusion, I believe it is very important, and this is the view I have taken to the prisons over the years, to recognize the sensitivity of the area in which we operate. Yes, we should make an independent assessment of each case and should not guild the lily, but in so doing we should be careful not to unnecessarily damage the overall morale of the police force, which is essential today, more than ever before, for the protection of the community within which we live.

B. Canada

1. Manitoba, Law Enforcement Review Act

Mr. Hans Schneider, Commissioner

Introduction

Our agency in Winnipeg is a recent one and a small one. Our sincere hope is that it shall flourish and succeed in the future, and we also hope that it will not grow. We will measure our success by the fact that it will not grow.

The new complaints procedure in Manitoba had its origin some nine years ago when the Manitoba Police Commission was seized with the investigation of a very severe complaint against local police officers in the city of Winnipeg. They came up, after two years or so, with the suggestion that the complaints procedure should be reformed and that there ought to be a separate agency, a civilian agency, with full jurisdiction in investigating and adjudicating and finally, in those cases where required, imposing disciplinary action. This culminated in the development of legislation which took a lot of time and involved a lot of consultation; a lot of conflict with spokesmen and advocates from different areas. All of this led to the August, 1984 passage of legislation called the Law Enforcement Review Act (L.E.R.A.).

This Act provides for the appointment of a Commissioner and the appointment of a separate Board. The Commissioner's role is to receive complaints, to have them investigated, to make a first determination of whether the complaint is justified or not (in other words, should be proceeded with), to attempt an informal resolution of the complaint and, in those cases where there is no other recourse, to refer the complaint to a hearing of the Law Enforcement Review Board.

The Board consists of twelve members, approximately one-third to one-half of which are former police officers, under the chairmanship of a lawyer. The actual hearings take place in panels of three, who are appointed on a rotating basis. We have had, so far, only one occasion to have a hearing of the Board to deal with a case. I should interject here that we have been in office now only since February 1, 1985, so that we have barely completed three quarters of a year. We have, in the first six months, investigated some 67 complaints.

We deal with a total police population of 1,000 members, over 90 percent of whom are in the city of Winnipeg and the balance scattered among some 17 smaller municipal police departments in Manitoba.

We do not have any jurisdiction in the case of the Royal Canadian Mounted Police (RCMP) who are responsible for policing in other parts of the Province - rural areas and small towns who have a contract with the RCMP. It is regarded as a serious gap because it would obviously be preferable if the entire Province were under the same kind of administration for a complaints procedure, but according to a ruling from a Superior Court a Provincial agency may not exercise jurisdiction over a federal agency like the RCMP. However, that is a problem that is nearing resolution, as the RCMP, in its turn, sees a need for an improvement of their complaints procedure.

Complaint Intake and Investigation

You have heard a lot about the levels of jurisdiction, the levels of power that various complaints agencies have. In our case I think, perhaps, we have as much authority, as much power, as any others and, perhaps, a great deal more than some.

Under the Act a citizen may complain directly to a member of a police department or to the Chief. If a complaint is received by a member it is passed on to the Chief who refers it to the Commissioner. The Act requires that all complaints must be referred to the Commissioner and it is the Commissioner's duty to investigate and otherwise deal with the complaint. If a complainant requests, a complaint may also be investigated by the police department concerned and the results reported to the Commissioner, but such a request must be made in writing to the Commissioner. We have had one such request thus far.

In those cases where a verbal complaint is made to a member of the police department the complainant must be advised that a written complaint should be submitted within 30 days of the incident. If the complainant has difficulty in preparing a written complaint the person to whom the complaint is made, including a member of a police department, is required to take down the complaint in writing and have the complainant sign it.

It is important to note that the Commissioner deals only with those cases where there is an official complaint from a citizen. All other disciplinary infractions continue to be dealt with internally by the police department. The Act also makes clear that whereas any person may complain about a disciplinary default by a policeman, even if it affects a third person, a member of a police department may not file a complaint under the Act about any act or omission which affects the member while he or she is on duty. In other words, a member who has a complaint against a colleague while performing his duties would take this to a superior; not the Commissioner. On the other hand, nothing in the Act prevents an officer making a complaint, like any other citizen, on behalf of a third person. A member may also

make a complaint on his or her own behalf about something that occurs while not on duty.

The Act refers to any member of a police department against whom a complaint has been made as the "respondent". The respondent receives a copy of the signed complaint and any additional particulars of the incident obtained by the Commissioner on his own behalf or at the respondent's request. The Chief of Police is required to provide the Commissioner with all relevant material and documents. If there is a question of privilege a Queen's Bench Judge may be asked for a ruling.

When the Commissioner investigates a complaint the police department is prohibited from carrying on any internal investigation of the same incident at the same time. If the Commissioner terminates the investigation because the complaint does not fall within the terms of the Act or the consent of an affected person has not been obtained, internal disciplinary proceedings may thereafter be taken. Also, if the respondent is facing criminal charges relating to the complaint, the Commissioner will suspend any action until the police department's investigation is completed. The Chief of Police is required to provide the Commissioner with full particulars of that investigation.

Up to now I have had the opportunity, personally, to interview every complainant and most witnesses, although we have investigators that can be sent out in cases where it is difficult to nail down the witness or bring them into the office. I have also interviewed all respondent officers.

Respondent officers at first were very reluctant to come forward. This has constantly improved over the last nine months. Police officers, particularly in the City of Winnipeg, have now come forward almost too quickly. We have had some cases where the police officer has come forward before even the complainant has a chance to come to the office and that can be a little embarrassing because we have to tell the police officer we would like to see him again. They have come to the conclusion that the quicker and more forthrightly they deal with the matter, the better it will be for them, and I think that is true.

If the Commissioner decides that a complaint should not be proceeded with, either because it has no substance or does not fall under the scope of the Act, a complainant may appeal to the Manitoba Police Commission. If the Commission rules in favor of the complainant, the complaint is referred to the L.E.R.A. Board for a hearing on the merits of the complaint.

It is anticipated that many complaints investigated by the Commissioner will be resolved informally, by agreement between the complainant and the respondent. This could involve mutual explanations and perhaps apologies. Anything said by the respondent or the complainant for the purpose of effecting an informal resolution is privileged and cannot be used at eventual further proceedings or even in a civil suit arising out of the complaint. If a complaint is resolved informally no penalty may be imposed on the respondent and no reference to the complaint or resolution is entered on the respondent's service record.

I think one shouldn't make the mistake of thinking that serious complaints always involves physical abuse whereas less serious ones simply involve incivility. I think that

one is as important as another, particularly since more serious forms of abuse of police power have their genesis in an attitude which is earlier on displayed by simple incivility and discourtesy. So we try to deal very specifically with those things and I was very encouraged to hear that in other jurisdictions they have that same attitude. We are careful, for every complaint, to complete a concise and logical report which sets out the point of view of the complainant, the reaction of the respondent and puts the two together. Very often this will almost automatically lead to an Informal Resolution.

When you can have both parties agree that perhaps there was a problem on both sides and when you can explain the reasons why the police officer did what he did and point out to the police officer what it was that he did wrong or what, in the perception of the complainant, was wrong, you have achieved a lot. I think the more we can settle cases on that basis the more we are doing our job.

If there is no Informal Resolution and the respondent admits to having committed a disciplinary default, the Commissioner determines a penalty in consultation with the Chief. The respondent may accept the penalty or ask for a review by the Board. No respondent is required to answer any questions from an investigator, the Commissioner, or at a Board hearing. A respondent may also have his lawyer present at any stage of the proceedings.

The L.E.R.A. Board

The Board consists of 7 members, two of whom are required to be peace officers or former peace officers.

The Board deals with three types of cases:

(a) Where a respondent has admitted to a disciplinary default and the Commissioner has recommended a penalty with which the respondent does not concur. In that case the matter is referred to the Board by the Commissioner, together with the facts, and on hearing the respondent's side the Board either confirms the Commissioner's recommendation or prescribes a lesser penalty. The Board cannot impose a more severe penalty than that recommended by the Commissioner.

(b) When the Commissioner rejects a complaint, the complainant may appeal to the Manitoba Police Commission and if the Commission disagrees with the Commissioner's decision, it may order him to submit the matter to the Board for a hearing on the merits of the complaint.

(c) When the Commissioner determines that a complaint has substance, but the respondent does not admit to having committed a disciplinary default, the Commissioner submits the matter to the Board for a hearing on the merits of the complaint.

In all cases where the Board holds a hearing on the merits of a complaint, and finds that a disciplinary default has been committed, the Board imposes the penalty recommended by the Commissioner or a lesser penalty. The Board may not impose a more severe penalty.

Board Procedures

Under the Act the Board has all the powers of commissioners under Paragraph V of the Manitoba Evidence Act. The Act also states that the rules of procedure in summary conviction proceedings apply to board hearings unless otherwise provided in the Act. The Summary Convictions Act in turn is cross-referenced to the Criminal Code of Canada.

The main points of Board procedures set out in the Law Enforcement Review Act are:

- Notification of a hearing has to be issued 14 days in advance of the date.
- Besides the complainant and the respondent, the Board has the discretion to add other parties and receive submissions from any other persons.
- Each hearing has to be presided over by either the presiding officer or deputy presiding officer.
- A Board member who is or was employed by a police department may not participate in a hearing involving a complaint against a member of that same department.
- The Board has discretion to accept evidence and information whether admissible in a court of law or not.
- Parties at a hearing may call and cross examine witnesses and be represented by counsel.
- A hearing may be held without the respondent being present.
- The respondent is not compellable as a witness.
- A Board hearing is public unless the Board decides that it is necessary to hold it in-camera.
- A respondent's name may not be published until after the Board has made a finding or the respondent admits to having committed a disciplinary default.

- Board decisions are delivered in writing to the parties, Chief of Police and Commissioner.
- Standard of proof is, as in criminal law, "beyond a reasonable doubt".
- Any party or the Minister may require the Board to provide reasons in writing for a decision on the merits of a complaint or the penalty ordered.

Penalties

In determining a penalty to be imposed for a disciplinary default, the Board and the Commissioner are restricted to the list of penalties prescribed in Section 30 the the Act, as follows:

> 30 "A member who admits having committed or is found to have committed a disciplinary default is liable to one or more of the following penalties set out in diminishing order of seriousness:
>
> (a) Dismissal.
> (b) Permission to resign, and in default of resignation within 7 days summary dismissal.
> (c) Reduction in rank.
> (d) Suspension without pay up to a maximum of 30 days.
> (e) Forfeiture of pay up to a maximum of 10 days' pay.
> (f) Forfeiture of leave or days off not to exceed 10 days' pay.
> (g) A written reprimand.
> (h) A verbal reprimand.
> (i) An admonition.

Appeal

A respondent (or complainant) may appeal a decision of the Board to the Court of Queen's Bench, but only on a question of law or the jurisdiction of the Board. The time

limit for appeal is 30 days after a Board decision, but may be extended by the court.

Service Record

The Act requires that the Chief of Police keep a service record for each member of the department. The record must contain information on disciplinary defaults, internal disciplinary offences, penalties and commendations. For the purposes of the Act, each member of a police force is considered to have a blank service record at the time the Act comes into force, but thereafter the Board, Commissioner and Chief of Police must take the service record into consideration in determining a penalty for a disciplinary default.

When a complaint is resolved informally or when the penalty imposed is no more than an admonition, no entry is made on the record. In the case of other penalties, if a member of the police force has committed no further disciplinary defaults, the Chief of Police, on application of the member, must expunge the record after two years, in the case of a reprimand, three years, in the case of forfeiture of pay, leave or days off, and five years, if the penalty was reduction in rank or suspension without pay. Every member has the right to inspect his or her service record.

Conflicting Proceedings

The Act contains a number of provisions to safeguard a respondent from double jeopardy and other unfair risks. When a member is charged with a criminal offence all action under the Law Enforcement Review Act is suspended and may only be resumed if a stay of proceedings is entered or the

charge is not otherwise disposed of on its merits. The Commissioner or the Board are obliged to report any evidence of a possible criminal offence to the Attorney General, and an investigation, hearing or disciplinary proceeding under the Act does not preclude the laying of criminal charges, but no testimony by a member before the Board can be used against him in a criminal or civil court proceeding.

Similarly, a respondent is not subject to any internal police discipline with respect to the subject matter of a complaint filed with the Commissioner, and any related internal disciplinary proceeding must be terminated on filing of the complaint. On the other hand, the Act does not apply to disciplinary matters not involving members of the public and internal discipline may also be invoked, in cases involving members of the public, when no complaint has been filed within the 30 day time limit, an affected person has not given consent to the processing of a complaint or the Commissioner determines that the complaint does not constitute a disciplinary default.

The Act also stipulates that a local municipal police Commission cannot be involved, in any way, in a complaint that is dealt with under L.E.R.A. The only involvement of the Manitoba Police Commission is to consider appeals by complainants when the Commissioner has decided that a complaint is frivolous or vexatious or does not constitute a disciplinary default. If the Manitoba Police Commission finds for the complainant, the matter is referred to the L.E.R.A. Board. Finally, the Act provides that it prevails over other legislation and over any collective agreement when there is a conflict.

2. Metropolitan Toronto, Office of the Public Complaints Commissioner

Stephen Ginsberg, Director of Legal Services

I want to say a few things before I begin telling you about our system. I have heard a lot of discussions throughout the course of this conference and something that has been said in the back halls, and maybe not said up here, is that no matter what kind of system you have, it is not going to work unless you have the cooperation of the police force. We are very fortunate in Metropolitan Toronto. We have a very fine police force and the person who is in charge of our Public Complaints Investigation Bureau, who we work very closely with and who is in charge of doing most of the initial investigations, is in this audience. I would just like to introduce you to a very sensitive police officer and a fine gentleman, Staff Inspector John Ball. If you would stand up, John, please.

In Metropolitan Toronto we have approximately 5,300 sworn police officers. Our office has jurisdiction only with respect to complaints against sworn police personnel. A person can file a complaint directly with our office or with the police. No matter where the complaint is filed, we get a copy of it. The Bureau--the police unit in charge of complaint investigations--also gets a copy and they commence an investigation.

The staff in the Bureau are senior police officers, Sergeants and Staff Sergeants. The investigation starts in the Bureau. In exceptional circumstances we can commence an investigation at the outset, but in general we don't do that. Although we have the power, after 30 days, to do any investigation we so choose, and have used it on a number of occasions, it is not our standard operating procedure.

The philosophy behind our Act is, firstly, that the police should have the initial opportunity to investigate and resolve the complaint to the satisfaction of the complainant. Secondly, there must be a great deal of openness in the police investigation. Thirdly, our office has the power to conduct its own investigation, when appropriate, and review the police disposition of the case, when asked by the complainant.

Every 30 days the Bureau reports, in writing, to the complainant and to our office, regarding the investigative steps that were taken, so that both the complainant and our office are aware of what is going on. If there are any problems we raise them with the Bureau and we can, of course, do our own investigation. Sometimes, depending on the issue, the Chief of Police will ask our office to do the initial investigation, even though we do not need his permission.

At the end of the investigation an extensive written report is given to our office and to the complainant. This report includes summaries of statements taken from all of the witnesses, including the subject officer, witness officers and civilians. If we have conducted our own investigation we are required to send a similar report to the Chief of Police.

About one-third of our cases are resolved informally to the satisfaction of the police officer and the complainant. They have to sign a written document which outlines what investigation took place up to the time of the Informal Resolution and how the complaint was resolved. The Public Complaints Commissioner has the power to overturn Informal Resolutions if there was some undue pressure placed upon the complainant. I am pleased to say that, so far, that has never happened.

The rest of the cases go to the Chief of Police for disposition. The Chief must give a written decision, which is sent to the complainant and our office. The Chief's disposition can take various forms. He can decide to cause a criminal information to be laid, in which case a criminal prosecution will take place, or he can decide to take internal disciplinary action. He can decide to summarily discipline the officer, usually by way of a reprimand, or he can decide to refer the case to a civilian Board of Inquiry. He can also decide to take no further action.

If the complainant is not satisfied with the Chief's decision, he or she has the right to ask our office to conduct a Review. This occurs in about 15 percent of our cases and that is when most of our investigations take place. We receive the complete police investigation file. We study it and decide whether or not further investigation is necessary. We talk to the complainant and, very often, to the subject officer and other witnesses. Usually, however, the police investigation is pretty thorough and there is not a great deal of additional investigation for us to undertake. We have very broad statutory powers of investigation, including Royal Commission subpoena power.

At the end of that review process a decision is made by the Public Complaints Commissioner as to whether, "in the public interest"--that is the test--he should send the matter to a Board of Inquiry hearing.

The Board of Inquiry is probably the most unique aspect of our process. The Board usually sits in panels of three. There are 24 people altogether and the three-person panels come from three groups of eight--one person chosen from each group. One group is appointed by joint recommendation of the police union (the Police Association) and the Board of

Commissioners of Police, which is our civilian police governing body. Another group is appointed on the recommendation of the Metropolitan Toronto Municipal Council and the third group comes from the joint recommendation of the Attorney General and the Solicitor General for the Province of Ontario. The people in that third group are lawyers. They chair the Board of Inquiry hearings.

The Board of Inquiry hearing is conducted basically like a disciplinary trial. Although administrative rules of evidence apply, there is a great attempt to follow, as closely as possible, criminal rules of evidence. The standard of proof at our hearings is beyond a reasonable doubt, the criminal standard.

That was one of the things that was negotiated prior to the passage of our legislation. One of the main reasons for this high standard is that the Board has the power to impose discipline directly on the police officer. To reiterate, this is a civilian Board that in the end result (only after the Chief of Police has already come to a conclusion about the matter) can impose discipline, up to and including dismissal.

On some occasions, as I noted earlier, the Chief of Police will send cases directly to our Board, bypassing his own internal discipline procedure. That has happened on a few occasions and some of those have led to disciplinary action by our Board.

That is an overview of how our legislation works. As you know, Sidney Linden's excellent paper is in your conference materials and my overview is expanded in that document.

2. Nova Scotia, Nova Scotia Police Commission

Admiral Harry Porter, Chairman

Thank you Mr. Moderator. Ladies and Gentlemen, I must say I have enjoyed this conference and it has been particularly beneficial to me, as I will disclose a little later on.

For those of you who are not very familiar with the Canadian process, the Attorney General in each Province is responsible for the law enforcement in the Province. Most of our Provinces have statutes called the Police Act. Those Acts provide for the formation of a provincial Police Commission. So it is in Nova Scotia. The Nova Scotia Police Commision has been in existence since October 1976. I am the Chairman of the Commission and the only full-time member. The other two members are part-time and we get together as required to fulfill our duties and responsibilities.

Nova Scotia is one of the smaller Provinces, both in size and population. We have a small staff of four investigators--they are all former members of police departments--and an administration staff of two. In Nova Scotia we have a total of 26 municipal police departments. The majority of those are quite small. We have a total of 750 sworn police officers in the Province.

The Nova Scotia Police Commission is responsible, under the provisions of the Police Act, for the promotion of the effectiveness and efficiency of municipal police forces in the Province and for the promotion and improvement in the relationships between the public and the police. The Act requires the Commission to hear and determine appeals on disciplinary findings imposed by Chiefs of Police or by

Boards of Police Commissioners or municipal Councils, and appeals on complaints against police. I will not deal very much with the complaints process because we are in the process of changing it and that is one reason why I came to this conference and one reason why I have received a great deal of benefit from it.

The complaints procedure at the moment is that the matter is dealt with by the police department and the Chief of Police makes the decision as to what he is going to do on it--whether he is going to take no further action, whether he is going to give the constable advice, or whether he is going to discipline the constable. The complainant can then appeal to the local Board of Police Commissioners. Every one of the 26 municipalities has a Board of Police Commissioners which is the police governing authority. They can vary in size from quite small ones to quite large Boards and they are all either elected officials or citizens that have been appointed by the Council of the Municipality, plus one appointee of the Attorney General.

If, on appeal, the Board makes a decision that the complainant doesn't like, there is a further appeal to the Nova Scotia Police Commission. We hold a hearing on it and make a decision. Our decision is final.

We also, when requested by a Board of Police Commissioners or directed by the Attorney General, are required to inquire into the conduct or performance of any member of a municipal police force, the administration of any police force, the system of policing in any municipality or the police needs of a municipality. You can see that our duties and responsibilities are fairly broad, but do not contain the matter of complaints against the police, except as an appellate body.

The Act was proclaimed in 1976 and as we developed it and used it it became clear the Act was flawed in quite a number of places. As a result of that, the Attorney General, in 1979, appointed our Chief Judge to hold a Royal Commission and to make a report on the Police Act and the regulations. Judge Green's report was in the hands of the Attorney General in 1980. It was a report that was widely discussed and debated and generally well-received. This year the Legislative Assembly of Nova Scotia enacted amendments to the Police Act which have not yet been proclaimed, because we are in the process of writing the regulations.

These amendments make quite a lot of changes in our Act. They increase the power of the Commission and also look after some rights of police officers, which will now be guaranteed. They also introduced what is known as a Police Review Board. The Police Review Board will be a panel of three, drawn from nine persons appointed by what we call the Governor-in-Council--in other words, the government of the day. Three of those people will sit as a panel. One will be a lawyer and he or she will be the chairperson of panel. The others will be drawn from two sources - people who are probably retired from the police force and interested citizens.

The Police Review Board will have two duties. It will review disciplinary matters which are appealed to them by a police officer and it will also review public complaints appealed to them by a complainant. It will hold a hearing that will go into all aspects of the complaint and hear witnesses. The Police Review Board will have powers under the Public Inquiries Act which will allow them to subpoena witnesses and documents and also to require evidence to be given under oath. Their judgement will be on the balance of

probabilities. The complaints process will still start at the police level but will then be referred directly to the Police Review Board, if the citizen wishes to take that route. In both cases there will be an attempt at informal resolution of the complaint; at the police department and again by the staff of the Police Review Board.

As the Chairman of the Nova Scotia Police Commission I will be the Registrar of the Police Review Board. The personnel that will be doing the investigating for the Police Review Board will be on the staff of the Police Commission and we will do the administration for the Police Review Board, as all of them will be part-time appointees.

I think that is enough to just give you an overview of what is happening now in Nova Scotia and what we hope will happen when the new Act is proclaimed, hopefully on January 1, 1986.

4. Ontario, Ontario Police Commission

John Macbeth, Q.C., Vice-Chairman

Policing in Ontario and its oversight is a complicated patchwork deriving its warp and woof from British tradition, the common law and many of its outward manifestations, sewn on, in a constantly changing pattern, by a number of authorities such as our federal government.

For example, the Criminal Code, which applies to everyone in Canada, is passed by the federal government. They also, of course, have recently adopted the Canadian Charter of Rights and Freedoms which sets out a great number of individual rights, which have a great effect on policing.

The Police Act of the Province of Ontario is our main governing Act, but there are other pieces of Ontario legislation that also have something to say about policing in Ontario, such as the Municipal Act and, here in Metropolitan Toronto, the Municipality of Metropolitan Toronto Act and the Metropolitan Toronto Police Force Complaints Act, which sets the rules under which Mr. Linden operates.

The various police forces pass their own rules and regulations which are enacted by their various governing authorities. There is also an overlap, which I mention for those of you who are from outside Canada, between the jurisdictions of the R.C.M.P., who have certain authority here in the Province of Ontario, our Ontario Provincial Police and our various municipal police forces.

Having now thoroughly clouded the scene and, I hope, provided myself with an escape screen for any questions, I

will now concentrate on the Police Act itself. One of the provisions of that Act is section 2 which reads as follows:

> "Every city and town is responsible for the policing of and maintenance of law and order in the municipality and for providing and maintaining an adequate police force in accordance with policing needs of that municipality."

Now, I mention that simply to show that policing in Ontario is the responsibility of the local municipality. Rural areas, where there are no municipal police forces, are the responsibility of the Ontario Provincial Police.

There are two alternate governing authorities in connection with municipal police forces in Ontario. One is a Board of Commissioners of Police, which consists of five members. Three members are appointed by the Provincial government and two members are appointed by the municipal government. One of the two municipal appointees is the head of the municipal council (e.g. mayor). There is at least one elected member on that Board of Commissioners of Police and possibly two. The smaller municipalities govern their police forces under a committee of council and, of course, in that case all of them are elected officials.

There are a few exceptions to the rules but I am not going to get involved in those. I would like to stress the fact that all of those people who govern municipal police forces in Ontario - whether it's a Board of Commissioners of Police or a committee of municipal council - are civilians.

The Board (or alternatively the committee of council) is responsible for the policing and maintenance of law and order in the municipality and the members of the police force are subject to the government of the Board and shall

obey its lawful directions. That clearly puts the responsibility for governing police forces on the Board. The Board is responsible for maintaining the force. It establishes the day by day rules and regulations under which it operates and has an appellate role in disciplinary procedures.

So we have basic and historic civilian oversight of police in this Province. Included in these responsibilities is the incidental matter of dealing with complaints against members of the police force. I say incidental, because the Board of Commissioners of Police have all these other responsibilities, which I have listed. Incidental to that is looking after complaints. Now I say that is the case in most of Ontario, with the exception of Metropolitan Toronto, where the Board of Commissioners of Police has been relieved of its responsibility for complaints by the Office of the Public Complaints Commissioner.

The governing authorities of the various municipal forces across the Province constitute, therefore, the major civilian oversight of law enforcement. So I am suggesting that it might be a little presumptuous to suggest that the only civilians who oversee policing are those who deal with police complaints, because that is not a major part of overseeing police operations. I say that with some word of caution because we look at civilian oversight of police as covering the whole field of police operations and not simply that of police complaints. I think this is one reason, because we have had civilian control of police, that we have good police forces in the Province of Ontario. They appear to be looked after and closely looked at by the various municipalities who run them. Those municipalities are proud of their forces and we have good policing, I think, as a result of civilian oversight.

Now, not contrary to what I have said, but as an exception to what I have said, because not all police always operate without problems, the same Police Act provides input from the Ontario Police Commission. The Ontario Police Commission consists of not fewer than three and not more than nine members, who are appointed by the Lieutenant Governor in Council. That is the Provincial Cabinet, the same body that appoints an Ombudsman. Presently, the Commission consists of five members - a Chairman, a Vice-Chairman, who is myself, (both the Chairman and I are full-time members) and four part-time members. I again remind you that all of those are civilians.

Our Commission has a variety of responsibilities as set out in the Police Act. Amongst them are advising Boards of Commissioners of Police and conducting a system of inspections to determine whether a police force is adequate and whether a municipality is discharging its responsibilities for the maintenance of law and order. We are also charged with operating the Ontario Police College and assisting in communications systems throughout the Province. In addition, we hear disciplinary appeals and also have a broad power to hold public inquiries concerning the performance of a police force and the adequacies of that force.

To carry out our functions we have a variety of personnel who are specialists in various fields. Our contact with the police forces is done through our Inspectorate Branch. They attempt to visit the 125 forces at least once a year. If there are serious problems in any part of the Province we certainly learn of them in a hurry.

As I have stated, we have the power to conduct public inquiries and this current year we have conducted three such inquiries. For these inquiries we operate under a statute

(the Statutory Powers Procedure Act) which gives us power to subpoena documents and witnesses and to take evidence under oath. These public inquiries are, as the name suggests, held in public.

As a result of the three inquiries we held this year we have recommended at least three discharges of police officers. I say recommend because it all goes back to the local municipality which has a great deal of autonomy, but I am pleased to say that all three of those recommendations were accepted. So most of our power is by persuasion, but the ability to conduct a public inquiry is pretty powerful.

We have jurisdiction for all public complaints against the Ontario Provincial Police and the many municipal forces, with the exception of Metropolitan Toronto, which is covered by Mr. Linden's agency. I might say, after listening to Hans Schneider as to how they do it in Manitoba, (i.e. attempting informal resolutions) that is the way we attempt to operate here, with a great deal of success. We are the final resort on complaints and we had 127 complaint cases reach our office last year.

I am pleased to say that certainly some criminal charges were laid, some disciplinary charges were laid, but for the most part they were settled in the same way as I believe Mr. Schneider settled his, by a process of getting the parties together. We encourage the local Boards of Commissioners of Police to hear their complainants, and remember these local commissioners are all civilians, and for the most part those are considered on a face to face basis, by getting the parties together, by our staff going and visiting them and perhaps settling them in a face to face manner, where any misunderstandings can be worked out.

C. Great Britain

1. England and Wales, Police Complaints Authority

Rear Admiral John Bell, Deputy Chairman

The first thing is what we have heard a lot about, informal resolution. That is new for us. It is taking place and working very well for minor things.

Let us look at the supervision. We are into this problem of where, exactly, independent oversight fits in. It fits in different places, as I have been listening, in different organization. Any death or serious injury must be referred to us. Various other things, such as perjury, corruption, actual bodily harm--a very large number of things--must be referred to us within 24 hours. We must respond in an equally short period as to whether we will supervise the investigation or not. We must supervise death or serious injury. I won't define serious injury but you can get the concept. We may also supervise other cases, particularly if there is a public interest. Since April 20, 1985 we have taken on 339 supervising cases.

What is supervision? This can vary with the particular case. On a very serious case the supervisor will actually be there with the investigating officer all the time. He can actually go and sit in while witnesses are being interviewed, but it is our policy that we do that as little as possible because the discipline depends on the police. We nevertheless get everything that comes out and the investigating officer accounts to a member of the Police Complaints Authority. At the end of the investigation a report is written and a public statement is issued by the Authority on the investigation itself--that it was done competently, it was done speedily (very important), that everything we required was done for us and that all the services we wanted were provided.

Then the Deputy Chief Constable of the force takes the report and proposes what he should do about it. It then comes back to my division, the Discipline Division. Every complaint, no matter how minor, providing it has not been informally resolved, comes into my division.

Two things can happen to it then. If there is a criminal offence it must go to the Director of Public Prosecutions, who is a member of the Attorney General's office, who always must decide on the criminal prosecution of police officers. He will decide whether a criminal charge will be brought. It is very interesting to note that, talking about the attitude of the people to the police, the Director of Public Prosecutions has stated publicly that it is very difficult to get a jury to convict a police officer in the United Kingdom. So cases will not be put up unless there is a reasonable chance of a successful prosecution.

We then look at it from the disciplinary aspect. One of my Authority members, or indeed myself will, although it has been supervised, go through the file with a toothcomb. Mr. Masterman talked about reviewing things on paper. The issue is, do you actually question witnesses, and the way we do that is at a disciplinary hearing. In other words, we are the ones who will say whether there will be a disciplinary hearing or not.

If the Deputy Chief Constable says that he does not think the complaint is substantiated, and we agree, that is the end. We will write the complainant quite a full letter explaining why. If we disagree with the Deputy Chief Constable we will recommend to him that he bring disciplinary charges. If, in spite of our recommendations, he cannot convince us otherwise but he still says "No," he

is not going to, we then direct that he bring a disciplinary charge. That will be heard by a tribunal consisting of the Chief Constable or perhaps the Chief Constable of another force and two members of the Authority. In other words the Authority can outvote because it is in the majority. That is a very powerful thing, which we try to use very rarely because normally, if we do recommend, the Chief Constable will, himself, bring a disciplinary charge.

One of the interesting things that comes out of disciplinary charges is that the officer may be convicted and may be punished. But in certain areas, if an officer is found guilty, they expect him to be strung up or guillotined. Indeed, I happen to know this happened in Toronto, too. After a punishment was awarded some people said, "This isn't good enough, get rid of him, get rid of him". That is not really what it is about. It is the punishment fitting the crime.

I don't know how you talk about positive results but I think what we can say is that in about 13 1/2 percent of cases there is a positive result, where we go back to the complainant and say, "This action is being taken". It might be a criminal charge, a disciplinary charge, or it may be an admonition from the Chief Constable. We also use that peculiar phrase "advice". I notice some of you use the word "counsel". The word "advice" is very difficult to explain to people. Can I perhaps say that before I joined the Navy I was a royal marine. I had to zero my rifle on the rifle range. I shot on the wrong target. My Sergeant gave me "advice". He also told me about my family and few other things, I might say. I think any police officer here who hears the word "advice" sort of sniggers to himself and pities the poor fellow who is getting it.

The big problem is time. It does take time. Sometimes we are accused of taking a long time on a case. There is a case, which is still on my desk at the moment, that I have had for nine months. It is because I have insisted on the force getting more information. I have insisted on the force taking certain steps. They have agreed to it and we are now going out to the complainant. We are saying, "Sorry about the time, but this is the result because of it".

Whenever I pick up a file I remember two things. There are some very bad policemen. The police are the first people to admit this and want to get rid of them. There are also some very bad citizens who complain against the police. They either do it for fun or they do it maliciously or just to pass the time. Every force in the United Kingdom has what we call these "Joe Williams" (fictitious). Joe Williams is a fellow in Manchester who comes in twice a week, maybe three times a week, to the local police station and complains about a policeman--his helmet was askew, his buttons weren't done up, this happened, that happened--every complaint of which must be investigated, because sometimes Joe Williams actually comes up with quite a good complaint. I had to write to a Member of Parliament recently about a delay and I said the delay was caused because this particular complainant had over 100 complaints outstanding on the same subject. Those are people who I am sure you all meet and know about. It might please you to know that dear old Joe Williams is invited to the Greater Manchester Police Christmas Party every Christmas.

2. Northern Ireland, Police Complaints Board

Brian McClelland, Secretary to the Board

May I say what a thrill it is for me to be here, especially to be sitting beside Joe Ingraham of Miami Vice. We get the program back home. My three boys will never believe it when I tell them. By the way, who are the Blue Jays? Well, you have the Blue Jays we have Barrie McQuiggan.

May I premise my remarks on the Police Complaints Board for Northern Ireland by stating that by this time next year perhaps the Board will cease to exist in its present form. That is the form that I am about to explain. The reason for this is that the government has introduced proposals for reform of the complaints procedures in Northern Ireland and these changes could account for the corresponding changes which have been introduced in England and Wales. There have been some amendments to meet Northern Ireland's particular needs and I shall mention these later. I shall outline the present system and highlight some of the weaknesses of it as I see them.

The Police Complaints Board for Northern Ireland was established in September 1977 under the Police - Northern Ireland Order following the report of the Working Party and the setting of the Police Complaints Board for England and Wales. The Board is financed by a grant from the Northern Ireland Office and reports annually and tri-annually to the Secretary of State. In addition the Board may make a report on any matters to which it considers the Secretary of State's attention should be drawn, by reason of their gravity or other exceptional circumstances.

The Board is composed of a Chairman, a Deputy Chairman, five part-time members and ten staff members. There is one police force in Northern Ireland, The Royal Ulster Constabulary (RUC). It has almost 11,000 full time members and they all come within the Board's jurisdiction. There are a number of part-time members who don't come under the Board's jurisdiction.

I believe the RUC is the second largest police force in the United Kingdom. Under the arrangements of the Police - Northern Ireland Order the Board, with the consent of the Secretary of State, may extend its functions to any authority containing a body of constables and, in this regard, the complaints procedure applies to the Ministry of Defence Police in Northern Ireland. Although that's been going on for about three years now I think I have had two complaints relating to the Ministry of Defence Police.

During 1984 about 2,000 complaints were received by the Board. Complaints may range from allegations of very serious assault to incivility or improper dress. The person who wishes to complain about the conduct of the RUC can make his or her complaint in writing to the Board or to the Chief Constable or by calling at any police station or the Board's offices. If the Board receives a complaint direct from a member of the public it is required to send it to the Chief Constable. Again, if a complaint is made to the Chief Constable a copy of it must be sent to the Board, however, the investigation of complaints remains in the hands of the police.

The investigation is carried out by a senior police officer from the Complaints and Discipline Branch - that's a special branch dealing with complaints. When it is concluded it is forwarded to the Board by the Deputy Chief

Constable who includes a memorandum stating his opinion as to the merits of the complaint, whether or not it is substantiated and how it is being duly dealt with. The papers in the case, which include the investigating officer's report and witness statements, are first examined by the Board staff and are then submitted to a Board member for further detailed examination. The Board member's decision on a case is regarded as a decision by the Board as a whole. The Board is empowered to request additional information and in some cases the Board, in order to satisfy itself, requests the Deputy Chief Constable to have particular witnesses interviewed or additional statements taken or to forward copies of relevant documents in order to obtain evidence of a forensic nature.

If the Deputy Chief Constable has decided not to prefer disciplinary charges, and the Board member agrees, the complainant and the Deputy Chief Constable are notified accordingly. On the other hand, if the Board member does not agree with the decision of the Deputy Chief Constable, and recommends that a disciplinary charge should be preferred, the papers are referred to a second member of the Board. Should the second member, who is normally the Chairman or Deputy Chairman, be of the same opinion as the first, a disciplinary charge may be recommended. If the Deputy Chief Constable does not accept the recommendation the Board has power, in the last resort, to direct that a charge be prepared.

Charges which are brought at the direction of the Board must be heard by a tribunal consisting of the Chief Constable and two Board members who have not previously been concerned with the case.

Around 80 percent of complainants make allegations of criminal offences. Reports of investigations of this nature must be sent by the Deputy Chief Constable to the independent Director of Public Prosecutions. His function is to decide whether to initiate criminal proceedings in court against the police officer. If a criminal charge is brought and a court acquits or convicts, that officer cannot be charged with a disciplinary offence which is in substance the same as the criminal offence. This is a fundamental principle of justice known as double jeopardy - no person should be disciplined twice for the same offence. However, this principle, in recent years, does not operate when the Director of Public Prosecutions has decided that criminal proceedings should not be brought. Such cases are referred to and considered by the Board individually, on their merits, and the Board may recommend disciplinary proceedings.

I mentioned I would speak of some of the shortcomings of the present system. Firstly, within the present system every complaint must be formally registered and investigated by a senior police officer. Only the other day I saw a complaint about a policeman who allegedly walked in an arrogant manner. It's pretty difficult to sustain a complaint of that nature. We look at every complaint, whether minor or very serious. It can be said the system lacks flexibility and a capacity to discriminate effectively between complaints worthy of full investigation and those of a minor nature, which may be dealt with more smoothly and informally by way of, for example, explanation or apology.

Secondly, although the Board has been impressed by the fairness of police investigations, there is a lack of public confidence in the system because police investigate complaints about other police. In the present system there

are no independent checks on the progress of the investigation.

Thirdly, there is a problem concerning the type of complaint covered by the discipline code in the legislation. For example, it is difficult to fit into the list of disciplinary offences allegations of oppressive conduct, harassment, and searching someone without good and sufficient cause.

This brings me back quickly to where I began -- the reform of the complaints procedures in Northern Ireland. Basically, the government's proposals for change were the changes to the system already operating in England and Wales. Very briefly, and at the risk of stealing Admiral Bell's thunder tomorrow, a major feature of the new system will be the introduction of an independent element in the supervision of the investigation of serious complaints and the right of the proposed Police Complaints Commission to approve the appointment of the investigating officer. There will also be scope for the informal resolution of minor complaints.

In England and Wales the Police and Criminal Evidence Act gives Chief Constables discretion to decide whether to involve the Police Complaints Authority in the investigation, if no formal complaint has been received. In Northern Ireland there are a number of matters which do not reach the Board, simply because no formal complaint has been received. A number of matters may not have hit the headlines. It is proposed, in Northern Ireland, that the Secretary of State should be able to ask the new Commission, in the public interest, to supervise the investigation of such complaints. It is considered that this would not weaken the position of the Chief Constable and, more importantly,

could help assuage public disquiet over the conduct of investigations.

Unlike the Police Complaints Authority for England and Wales, which has no role to play, it is also proposed that the new Commission should have oversight of the informal resolution procedures. The Commission would undertake the role of monitoring procedures by a post hoc examination of the handling of cases and report on the effectiveness of the arrangements in its annual and tri-annual reports.

Briefly, and in conclusion, as the Board stressed in its 1984 annual report, the creation of a body to supervise the investigation of the more serious cases, in addition to considering the disciplinary aspects of investigated complaints, suggests a workable compromise between a completely independent system of investigation and a system in which only the police investigate complaints against themselves. There is a measure in Northern Ireland which would hopefully achieve that delicate yet necessary balance between public confidence, on the one hand, and acceptance by the police, on the other. Thank you.

D. The Netherlands

(See p. 58, speech by Dr. Jacob Rang, Ombudsman)

E. SWEDEN

(See p. 70, speech by Judge Ulf Lundvik, former Ombudsman)

F. United States of America

1. Atlanta, Civilian Review Board (from Werner Petterson's Compendium)

On August 24, 1984, through an administrative order, Mayor Andrew Young established the Civilian Review Board (CRB).

> "A Civilian Review Board is hereby established for the purpose of reviewing cases involving allegations of excessive use of force, serious bodily injury, or death, as a result of action by an employee of the Bureau of Police Services or the Bureau of Correctional Services."

The CRB receives reports from the Department of Public Safety outlining its investigations and dispositions of citizen complaints. Citizens can request a CRB review of their complaint if they are not satisfied with the Department of Public Safety's disposition. After completing its review, the Board makes findings and offers recommendations about the complaints and forwards them to the Mayor; the recommendations will indicate whether or not there is probable cause to bring charges against the City employee.

The Board is the largest of civilian oversight agencies with 27 members; functionally, it breaks down into five hearing panels of five members each plus two co-chairs who are appointed by the Mayor. The co-chairs meet monthly with the Mayor's staff and the Department of Public Safety to review the processed complaints.

2. Baltimore, Complaint Evaluation Board (from Werner Petterson's Compendium)

The Maryland State Senate passed legislation (S.B. No. 642) instituting the Complaint Evaluation Board (CEB) for the City of Baltimore.

> "The Complaint Evaluation Board of Baltimore City is created to provide a permanent, statutory agency in Baltimore City through which complaints lodged by members of the general public regarding alleged acts of discourtesy and excessive force by personnel of the police department of Baltimore City are to be processed and evaluated."

Since CEB is a State created entity for Baltimore, the members of the Board are State and local government officials: State's Attorney of Baltimore, Attorney General of Maryland, Baltimore's City Solicitor, Baltimore's Police Commissioner, Baltimore Legal Aid Bureau's Director, Maryland Human Relations Commission's Director and Baltimore Community Relations Commission's Director. The Board's jurisdiction is limited to discourtesy and excessive use of force complaints.

A citizen's complaint may be filed at any police district station, Baltimore Community Relations Commission, Legal Aid Bureau, police department's internal investigations unit, or at the Maryland Human Relations Commission. The written complaint is signed by the complainant and notarized. Copies of the complaint go to the complainant and, within 48 hours, to the Baltimore Police Department's internal investigation unit.

The internal investigations unit has 90 days to complete the investigation and report to the CEB. The Board, in turn, has 30 days to review the investigative report and

make a written report to the Police Commissioner stating its findings and recommendations. The Board may request any party to a complaint to take a voluntary polygraph test. Then, the Police Commissioner, who has final decision making authority, has 30 days to report to the Board stating what action was taken. Copies of the Board's report and the Commissioner's report are sent to the complainant and accused police officer. The CEB also makes semi-annual statistical reports about processed complaints.

CEB can make one of four recommendations to the police commissioner: (a) sustain the complaint and approve, disapprove, or modify the proposed internal investigation division's action against the police personnel, (b) dismiss the complaint because of lack of evidence, (c) exonerate the police personnel because of the complainant's failure to prove his case by clear and convincing evidence, and (d) the Board may request the complainant, witnesses, and the police personnel involved in the particular complaint to submit voluntarily to a polygraph test or to appear voluntarily before the Board.

There is great care taken to recognize the Law Enforcement Officer's Bill of Rights in Maryland:

> "Nothing contained in this article (S.B. No. 642) may abrogate any constitutional, statutory or common law right of police personnel against whom a complaint is filed, nor of the complainants, investigators or witnesses who participate in the complaint procedure."

3. Berkeley, Police Review Commission

Eileen Luna, Chief Investigator and Administrative Director

The Berkeley Police Review Commission is one of the oldest, if not the oldest, continuing functioning civilian review board for police in United States. We are part of the City Manager's Department. We are completely autonomous from the Berkeley Police Department. The Commission is composed of nine civilian Commissioners, three of whom are present at this conference. Each Commissioner is appointed by a City Council member and serves a two year term. Police officers and city employees cannot be appointed.

We have a staff of four civilians, which includes two investigators and two clerical personnel. The Berkeley Police Review Commission has jurisdiction over all police department personnel, both sworn and non-sworn. In addition, we have jurisdiction over volunteer police reserves.

We have jurisdiction over the whole range of allegations of misconduct, from excessive force to discourtesy. This includes inadequate investigation, improper police procedure, improper stop and detention, etc. We find it critically important to have jurisdiction over discourtesy because we feel that, in that way, we can best change or modify police officers' behaviour. We hold a mirror up to the officer and show them how they appeared to a citizen on the street. Therefore, they have the opportunity to change their behaviour before it ever gets to something extreme.

We also have jurisdiction over police policy. The Police Review Commission reviews and participates in training, establishes guidelines and overseers and recommends policy issues, which may come out either from the community or from the Commission, itself.

The Police Review Commission holds evidentiary hearings with all parties present. Police personnel are required to testify as a condition of employment. We receive between 80 and 100 complaints per year. The majority of those are discourtesy. Approximately 60 complaints go to hearing and about one-half are sustained.

The Berkeley Police Review Commission came about out of struggle and conflict. We were established in 1972 by a voter initiative but for two years we didn't take a case. We were fought in the courts by the Berkeley Police Association. After that period we began taking cases and having hearings. Again, in 1982, we were challenged in the courts, under what in California is called the Police Officers Bill of Rights. The Court ruled that we were not in conflict with that law.

We have original jurisdiction over complaints. A complaint must be filed at our office within 30 days of the date of the incident, with an additional 30 days late-filing period, at the discretion of the Commission. The Police Review Commission also has the authority to originate complaints, if it deems necessary. The complaint is filed under penalty of perjury. After filing, the BPD member and the department is informed of the complaint and of the allegations made. An investigation is done by a staff investigator. This includes interviewing all BPD personnel, both subject and witness, listening and transcribing the communications centre tape and summarizing all police department records, as well as any court or medical records. Any civilian witnesses are also interviewed. This is all written up into a Report of Investigation, which is a public document. The complainant receives a copy, as does the subject officer. An evidentiary hearing, which we call the Board of Inquiry, is then held. It is held by a random

group of three of the nine Commissioners. This is an open public hearing and the media may attend. The complainant is required to attend, as are all subject and witness BPD personnel. Testimony of all witnesses is taken under oath.

The Police Review Commission has subpeona power which can be used, if necessary, to compel citizen witnesses to testify. There is no need to compel police department personnel because, as I told you, they testify as a condition of employment. The hearing is not conducted by strict rules of evidence. The Commissioners can consider such evidence as they deem necessary.

After testimony the Commissioners may cross-examine, as may both parties to the complaint, who may be represented by counsel. A decision is then rendered, which is advisory, to the City Manager. The Berkeley Police Review Commission does not have the power to discipline and, as I said earlier, approximately 50 percent of the cases that go to a hearing are sustained.

4. Chicago, Office of Professional Standards

David Fogel, Director

The Office of Professional Standards (OPS) was created, in 1974, in response to public and internal police department concern about the integrity of excessive force investigations. OPS was established to furnish civilian investigation of alleged police misconduct.

We are a civilian unit of the Chicago Police Department and I, as the chief administrator, report directly to the Superintendent (Chief) of Police. OPS is part of the Office of the Superintendent.

The Chicago Police Department has about 12,000 sworn police officers and about 3,400 civilians, so our jurisdiction is over approximately 16,000 people, which includes the 80 of us. We discipline ourselves as well, using the same process. We have 60 civilian investigators and we now require at least a college education to qualify as a candidate. No sworn police officers conduct OPS investigations.

There is no statutory authority for OPS. We exist by Order of the Superintendent. Of course, we do have one authority - that is our budget, which comes from City Council and which is in excess of $2 million.

We receive all complaints that come from the public, but we retain for investigation only those that have to do with excessive force, gun waving and all shootings--anybody hit by police gunfire--even when a cop shoots himself, and we get about half a dozen of those a year, including a few suicides. We have jurisdiction over all personnel of the department, including off-duty (including domestic)

situations, for sworn and non-sworn personnel of the department. Non-excessive force complaints are referred to the Internal Affairs Division for investigation. In 1984 we received 7,528 complaints and we retained 2,581 of those for an OPS investigation.

When we conduct an investigation we have access to everything, including technology. We are in the police headquarters building. Any kind of police department material, paper work etc. is available to us. We take formal statements from police officers, which they sign. All of our sustained cases are reviewed, as a matter of record, by the State's Attorney, the prosecuting agency. All our shooting investigations, which are not complaints necessarily, unless they are converted into complaints, are also reviewed by the prosecuting agency and sometimes by the "feds".

All our cases go through an internal review process inside our office and then there is an internal review process in the Police Department. The process for an OPS sustained case is as follows:

Command Channel Review	1. The case is reviewed by the accused's commanding officer for their concurrence or non-concurrence.
Acceptance or Rejection	2. The accused is then allowed three days (72 hours) to accept the disciplinary recommendation made by OPS or to request that a Complaint Review Panel (a group of peers) be convened to review the case. This part of the process is managed by the Department Advocate.
To Superintendent for Final Action	3. After a hearing before the CRP, the Department Advocate sends a summary of the Hearing and recommendations to the Superintendent of Police for final decision.

Police Board Review and Final Action	4. If the disciplinary action was for a maximum of a five (5) day suspension the Superintendent's action is final. If the suspension was from six (6) to thirty (30) days and the member requests a review by the Police Board, the Board may either confirm or overturn the Superintendent's action.
Police Board Hearing and Final Action	5. In cases of recommended separation of a member from the Police Department, the OPS or IAD forwards the case directly to the Superintendent. If he concurs, it goes to the Police Board for a hearing and final action.

Failure to provide information to OPS is, itself, an offence which could lead to a person being fired. They must participate. That is a General Order so we have no problem of access. Subject police officers are afforded administrative rights or, if appropriate, criminal rights and counsel, before statements are taken.

I would like to talk, for a moment, about our new organization--IACOLE, the International Association for Civilian Oversight of Law Enforcement. I would just like to throw a few questions at you. Watching us, as a profession, I can see a lot of variance in this room. Some of us are very distant from police departments and some of us are employees. In future meetings let us take a closer look at this word, "independence". Taken to its extreme, it may be much less effective than something that is inside an agency, where it can affect policy.

Inside a police department Chiefs of Police may listen to their own people quicker, hear the warning of something and change policy, General Orders, training requirements and so on, much faster than they will if they see an Ombudsman Report or an independent Commission someplace or a newspaper article. I am not suggesting that either one necessarily

happens, but we ought to investigate before we settle on what is the best system.

OPS, for example, is an inside agency. Substitute your own initials here for a moment. OPS is not independent. We are part of the police department, structurally, but the attitude is independent and the performance is independent. We only recommend and there are three or four layers of appeal, but the batting average is about 90 percent concurrence, which is not bad.

OPS has a thing called "not-sustained". We have now moved more away from "exonerated" and "unfounded", towards "not-sustained", which means there is not enough evidence to prove or disprove the allegation. I think that can be expected. A citizen can accept that, even if they are the witness to something, we couldn't prove it, but we have a fairly good batting average. You can interpret that. It may not be a good resolution but what does a "not-sustained" mean? Can it mean anything in the way of change in the Department? I suggest to you that, at least in Chicago, "not-sustained" or a string of them on your record is not a reference for your next promotion.

I can give you something even beyond that, if you are interested in the structure of a police department and changes in the way police operate. We had a celebrated case, right after I came on board, about 16 months ago or so. Two officers with a string of, between them, about 50 "not-sustained". We suggested, at the last one, that they be fired. It went up to the Police Board. The Board exonerated them. As a matter of fact, they were found innocent.

They had to wait eight months to get that Board hearing and they were out of work for those eight months. So we had a natural experiment. In the period before we said they ought to be fired they were getting complaints at a pretty good clip. Some of the cases were in court and some probably will be. Their performance ratings in the department were, out of a scale of 100, about 81 or 82 and they always seemed aggressive officers--"that is why we get these phony complaints". Now they have been back on duty for eight months and their performance rating is still about 81 or 82, but one thing did change. Not a single complaint has come in. Not one of these "phony complaints" from citizens. There is no more excessive force. Not one in eight months. That is extraordinary for these two. Now, of course, they had a partner change, but they are still working in the same unit, which requires aggressive work. So you don't always lose, even with a so-called acquittal.

I want to leave you with two thoughts. First, that the majesty of the Constitution is, as somebody pointed out, the closest blue uniform to you at any given time. As Clements so wisely remarked about war, "war is much too important an issue to be left in the hands of Generals". The same thing is true here. The Constitution in the States, in Canada and elsewhere, is the expression of the government's way of intruding into your life, in a most intrusive way. It should not be left simply in the hands of police officers, no matter how dedicated or professional they are. We all have a stake in that.

My last thought is, having seen oversight and corrections in other agencies, I wouldn't get too cocky, any of us, about "success". It is possible that oversight mechanisms--either independent, Ombudsman, OPS or any of these--can have the semblance of due process and fairness to

everybody on the outward face and then immunize them from criticism, and they will still be operating in an assaultive manner. So be very careful of this. I suggest these as future items on an agenda because we have no research yet. Let us just keep open minds and see where we are going in the coming years. This is an historic occasion and I am very pleased at having this opportunity to address you. Thank you.

5. Cincinnati, Office of Municipal Investigations

Cheryl Grant, Chief Investigator

The Office of Municipal Investigation is what politically works in the city of Cincinnati. In 1977 and 1978 we had eight police officers who were killed and we had eight civilians who were killed. The police officers took over the city one day - they stopped work, they intimidated City Council, demanded bullet proof vests, 357 Magnums and shotguns in their cars. The citizens in the community took to the street and demanded that there be an organization outside the Police Department to investigate their complaints.

The population of Cincinnati is 385,000. Sixty-two percent are white, 35 percent are black, three percent are other and we are on the Mason-Dixon line, so we have a lot of southern migrants. Because of that we have neighbourhoods that are distinct. There are 47 of them. Some are predominantly of one racial group. Out of that came what we called a municipal integrity unit. The goal of the Office of Municipal Investigation (OMI) is to maintain the integrity of the city of Cincinnati.

We maintain the integrity by investigating all city employees. There are 5,500 city employees, 884 police officers, 654 of them on the street. The OMI not only investigates police officers, but we investigate fire and other non-uniform employees.

We have been in existence, on paper, since January, 1980. The first Chief Investigator was hired in 1981 and that is me. Over four years we have had 1,048 complaints and about 600 of those have been against the uniform forces.

The majority of complaints are in the area of excessive use of force and improper procedure. The Chief Investigator has a right to compel all city employees to appear and give testimony. If we need subpoena power then we can get that through City Council. I do not use the City Council subpoena because they have to know everything. Our office has confidential materials and we do not like the public to know information concerning our investigations before we issue a report.

We have a Charter form of government. We have a City Manager and nine members of Council elected at large. The Office of Municipal Investigation is part of the City Manager's Office. Therefore, no Department Head has authority over the Chief Investigator. I report directly to the City Manager and I make recommendations and findings to him, based upon our investigations. We also have the authority to call together Department Heads, to look into issues, such as excessive use of handcuffs by police officers, and see whether or not we can do something to control that, even though in many of our complaints it is considered non-serious.

OMI, generally, will not investigate what we call non-serious complaints. Twenty-five percent of our police investigations are sent back to the Police Department, which has parallel jurisdiction, for investigation. However, we live in a community where neighbourhoods are very powerful. If something appears to be non-serious to me, but appears to be serious to City Council, we investigate.

We also have a very active Sheriff's Department. If they get loose with their guns and City Council want us to look into something that they do, we do that for the City Council and not for the Sheriff. We refer many of our

cases, relating to police, back to either the Police Department or to a non-city agency, if necessary, because we have cities within our city. Often times our citizens are not certain who the people are.

We have a civil service system and disciplinary action begins at the Department level. We do not have a Police Department. We have a Police Division that is part of the Safety Department. When I make a recommendation for disciplinary action the Safety Director must determine whether or not action will be taken. If the Safety Director determines that action should be taken, then the employee is given notice and the civil service disciplinary process begins. OMI does not have hearings. OMI only makes recommendations and findings.

We automatically respond to all shots fired. Because I have a staff of two investigators--one for police only, one for non-police--we will only respond to intentional shootings by police officers. We have an average of five police shootings a year. Most of them are injury and not death shootings. Most of our shootings are controversial and, therefore, generate a lot of public interest. We are called to the shooting when it occurs. The investigation begins at that point.

We give employees the right to testify without criminal action being taken against them. We also will not compel them to testify if we believe that we want to take criminal action against them. We will merely give the employee his or her Miranda warnings. I have access to all records, files, and documents of the city, except in intelligence matters, and I must get permission from the City Manager to go into those files. All other records are in my jurisdiction and they must be given to me immediately. In

our city, when we have a shots fired case, we have the case looked at by the City Solicitor, the Police Department and OMI.

OMI is for the citizens. We give the citizens their day in court. The citizens want to tell their story. They are not particularly concerned, in some cases, whether or not you can find against that officer--"just don't tell me that I'm not telling the truth about what happened." When we issue dispositions I use "proper conduct", "improper conduct", "policy failure", "exonerated", "insufficient evidence" and fifteen other categories. What I will tell the citizen is, "We have looked at the evidence, your complaint is sustained, but there is not enough evidence to prove, in a disciplinary action, that this officer (or this employee) committed this wrong." Many times the citizens can understand that. Also, when we report out we give management reports. We tell the city that there should be a policy discussion about the use of this policy or procedure.

In our city our police officers are not too up on searches and seizures; they don't read the Supreme Court Reports. If they see a car that they want they will just go pick it up. We will take an incident like that and we will tell the department that you must read what the Supreme Court has now said about searches and seizures and policy should be made or a procedure should be established so that the officer conduct will be within the law, even though that officer's conduct, according to your procedure, was proper.

That is the Office of Municipal Investigation.

6. Cleveland, Investigative Standards Board (from Werner Petterson's Compendium)

For the past two years, a civilian oversight agency has been evolving in Cleveland, Ohio. Cleveland has relied upon the internal investigative procedures of the Cleveland Police Department in processing citizen complaints. Actually, there have been two distinct offices responsible for citizen complaints; one has responsibility for excessive use of force complaints and is considered an effective operation, whereas the office which processes the other citizen complaints is thought to be unresponsive and unprofessional. The Police Prosecutor's Office, which is a Mayoral appointee, becomes involved in citizen complaints of excessive use of force, criminal activity, or incidents that generate strong community reaction.

Following the shooting of a black man by an off-duty, white police officer and a police department decision that the officer had acted properly and had not violated departmental policies, the Mayor asked the Police Prosecutor's Office to examine the police investigation and disciplinary decision. The Prosecutor found that the department had done a thorough investigation. Also, the Mayor established a blue-ribbon citizen committee to review police-community relations and the citizen complaint procedure and make recommendations. This committee recommended against a civilian review board and for a review procedure within the Safety Director's Office. This recommendation was implemented by establishing the Investigation Standards Board. This agency is staffed by four investigators and supervised by the Safety Director. This Board has been criticized as being ineffective because of political realities in Cleveland government; it reviewed 92 cases and found no cause for altering any complaint decision. Because this effort has been unsatisfactory, the

Mayor and the City Council President proposed separate legislation creating a civilian oversight agency. After negotiations between the Mayor and Council President, an ordinance was passed in City Council establishing a Police Review Board that consists of five members to be appointed by the Mayor and approved by the City Council. The ordinance was placed on the November 6, 1984 ballot and received public endorsement. However, the Board was successfully challenged in Ohio Common Pleas Court by the two police unions. The Court ruled that the City had violated a contract provision, which was stipulated by an Ohio statute, when it created the Board. Cleveland was included in this review because of its use of the Safety Director's Office. Under different circumstances an agency similar to the Investigative Standards Board could be effective and an alternative to a complaint procedure that relies solely on the police department's internal affairs unit.

7. Dade County, Independent Review Panel

Wesley Pomeroy, Executive Director

Following the fatal shooting of a black businessman discussions began among community representatives and public officials regarding the need for civilian oversight of the police and improvement in police-community relations. In 1980 the Dade County Commission passed an ordinance creating the Independent Review Panel (IRP) and during Commission debate it was decided to expand IRP's jurisdiction to include all 19,000 County employees. This includes 2,655 in the police department--2,239 are sworn and 416 are non-sworn. So, what I say applies to all County Departments; not just the police.

The IRP has six members, five of whom come from a list of nominees submitted by the following "community-based" organizations: Dade County League of Women Voters, Dade County Bar Association, Community Relations Board, Community Action Agency and the Dade County Association of Chiefs of Police. The sixth member is appointed by the County Manager. That is the panel of people with whom I work.

I will have been with the panel two years at the end of December. As Executive Director I am appointed by the Chief Judge of the County. That is his only connection with this whole function. He is designated by the legislative body, the Board of County Commissioners. He appoints after all the candidates are screened by the Panel. I have five staff persons.

We have jurisdiction over all matters--operational, procedural and policy. By our own rules we do consider employee complaints against their own agencies or personnel matters. We take a look at the system to make sure it is

working properly and if we find a whole group of employees who are not represented by anyone, who do not have any tenure and do not have any rights, sometimes we will look at their complaint and deal with it.

Any complaint that comes to us is referred to the agency against whom it is made, with a request to investigate thoroughly and report back to us and the complainant. The report comes back with the full investigative file, including tapes, transcription, all the notes, everything. At that stage, if we are satisfied and the complainant is satisfied, we make a recommendation to the Panel that it be concluded. If we do not think the investigation is good enough we send it back. We ask for more work to be done and we investigate as well.

By County ordinance I have access to any other investigative agency within the County. We have the power, in our budget, to hire investigators and other resources.

If the departmental response does not resolve the complaint an IRP sub-committee meeting is held. The complainant and a representative from the accused Department is invited to attend. Many complaints are resolved informally at this stage.

The IRP may conclude a case with no action recommended or with a lot of action recommended. They may recommend criminal prosecution, disciplinary action or no action at all, saying the complainant was wrong. They may conclude, as far as the complainant is concerned, but carry it on in terms of other matters which must be looked into.

We have no subpoena powers. We have no power to compel anybody to do anything. But the interesting thing is, in

the entire history of the Panel, every recommendation of the Panel has been seriously considered and almost all of them have been implemented. When they have not been implemented the agency has come back with a very good reason for not doing it and with a reason that is finally accepted by the Panel.

If the Department Head will not act we go to the County Manager and he almost always acts. We could go to the County Commissioner but we have never done that. We have no authority over municipalities in the County, unless they ask us to come in. They have done that twice.

I would like to mention that we very seldom make recommendations in terms of discipline and criminal action. There has not been one incident since I have been there where criminal action has been required to be recommended by us. The reason is that the Police Department is on top of it. They take care of their own business and they do a pretty good job of it.

We have less trouble with the Police Department than we have with a lot of other agencies. Other agencies are not set up to investigate and we have had to literally design systems for them and monitor them. You get some notion of the magnitude of this when you consider that one complaint alone, against Building and Zoning, represents over 500 locations involving handicapped access and three sets of Inspectors with no accountability in terms of complaint processing, which now is going to be concluded because we have built it for them.

If a complaint represents a serious problem to the community or the complainant the IRP may initiate an expanded review or investigation and hold public hearings.

A final report is then prepared, containing findings of fact, conclusions and recommendations. The report is submitted to the County Commission, the County Manager, the complainant, the accused party and the Department Director.

8. Dallas, Citizens/Police Relations Board (from Werner Petterson's Compendium)

In September 1981, a City ordinance was passed creating a permanent Citizens/Police Relations Board (CPRB) for the City of Dallas. The nine member Board is appointed by the City Council.

The CPRB was given the following eight functions:

(1) following the police department's internal affairs investigation of a citizen's complaint and after the Police Chief has made his decision, the Board reviews the investigation with the Police Chief of incidents involving fatalities or serious injuries.

(2) receives complaints of police procedures, treatment of citizens, abuse, harassment, violation of civil rights, serious injury, or fatality and forwards complaint to the internal affairs unit.

(3) suggest further investigation of a complaint to the Police Chief.

(4) if dissatisfied with police investigation, CPRB can request City Council for an additional investigation through the Council's subpoena powers.

(5) receive information from witnesses.

(6) request City Council review of Police Chief's disciplinary decision.

(7) request City Council to seek grand jury review.

(8) recommend improvements in police policies and procedures.

The Board has an advisory function to the Police Chief, City Manager and City Council. Therefore, CPRB does not conduct its own investigation; the interviewing of witnesses and the use of subpoenas are prohibited. CPRB's findings go to the Police Chief, City Manager and, if appropriate, to the City Council.

9. Detroit, Board of Police Commissioners (from Werner Petterson's Compendium)

The most common form of administrative authority over the police has been the single civilian police commissioner. Theoretically, the civilian police commissioner has the final word on departmental policy and is the representative of the civilian population within a police department. If there is a general dissatisfaction with the department's operation, it is the responsibility of the civilian commissioner to insure that appropriate corrective actions are taken. It was envisioned that the commissioner would avoid the appearance of cronyism and political interference in police operations which often resulted when control emanated directly from a mayor or a city council.

A principal criticism of the single commissioner has been the cooptation of the position by the police. Rather than acting as the citizen's representative, the commissioner is the police department's voice in the community. Because the commissioner is generally the full-time head of the police department, and closely involved in the day-to-day police operations, it is difficult to establish the reality of, or even a perception of, independent civilian control of the police.

In Detroit, the commissioner concept of civilian authority took the form of the Board of Police Commissioners (BPC). The five member Board was instituted on July 1, 1974 and has supervisory authority over the police department which includes establishing the department's policies, rules and regulations, approving the budget, and serving as the final appellate authority for employee discipline.

In December 1978, Mayor Coleman Young issued an Executive Order directing the Board and the police chief to

implement the provisions of the Board's authority and "clearly establish the civilian role regarding the management and operation of the police department".

The BPC mandate is: (1) "receive and resolve any complaint concerning the operation of the police department" and (2) "act as final authority in imposing or reviewing discipline of employees of the department".

The five members are appointed by the Mayor and approved by the City Council and each serves a five year term. The members select a chairperson from among themselves who serves a one year term. The Board members "shall be representative of the total community".

The BPC meetings are held weekly and are public; one of those meetings per month is held in the community. Board members must be city residents and cannot be appointed to the BPC if they were employed by the city or held a city appointed/elected position three years prior to the appointment.

In 1978, when the Board of Police Commissioners assumed full authority for citizen complaints it formed its Office of the Chief Investigator (OCI). OCI staff is composed of civilian and police investigators and are appointed by the BPC; these investigators report to the Board, not to the police chief. The OCI office is in police department headquarters and operates on an 8 a.m. to 5 p.m. schedule.

OCI accepts initial complaints and conducts investigations into complaints of police excessive force, physical and verbal abuse. Citizen complaints about police service or criminal activity are referred to other investigative units. OCI can act on an appeal basis to determine if a prior investigation was adequate.

When OCI conducts its interviews the accused police officer can have legal and union representation and receives written notice of the interview and a copy of the complaint.

Once the investigation is completed, a report is made indicating one of the following recommended dispositions: proper conduct, policy failure, improper conduct, insufficient evidence, or unfounded complaint. In addition to the disposition, the report indicates whether the case should be closed without any action, or it should be closed with disciplinary action, or the case is closed until the BPC takes further action. The report goes to the Chief Investigator who summarizes the investigation and forwards it to the Board's Executive Secretary. If no improper conduct is found, the BPC closes the case at a public meeting; however, if improper conduct is found, the police chief reports to the Board recommending disciplinary action. If either party is dissatisfied an appeal can be made to the Board which will make a final decision.

10. District of Columbia, Civilian Complaint Review Board

Lucy Edwards, Executive Director

I am very pleased to bring you some report of our Civilian Complaint Review Board in Washington, D.C. I don't know, in terms of age, how we should be classified. The concept of civilian review or oversight of police activity in Washington, D.C. is an old one. We did indeed have a Civilian Complaint Review Board from 1948 forward. However, in 1965 the old Review Board decided to resign en masse, recommending, to what were then the Commissioners of the District of Columbia, that there be a truly independent civilian complaint review board. A board with staff and resources so that they might not depend on the investigation of the Police Department and the will of the Police Department but rather could, indeed, independently look at the whole issue of civilian complaints about police misconduct.

Thus, in 1981, there was a new Civilian Complaint Review Board Act establishing the Board that currently exists and it does have the same name as the old Board, which is the Civilian Complaint Review Board. In mid-1982 the current Board's offices opened and we became operational.

Since that time we have received about 1,400 complaints. We receive complaints about police misconduct in three very specific areas. Complaints about police harassment, excessive use of force and use of language against an individual which would be demeaning to any individual to whom it was addressed, or which might indeed trigger disrespect for law enforcement officers. We have jurisdiction over the Metropolitan Police Department - about 3,880 police officers. We also have jurisdiction over special police, who are D.C. government employees. That is

a number that I am a little uncertain of. We have been trying to take a head count. That includes the D.C. Protective Agency and it includes very special police who handle our public libraries, our university, the D.C. General Hospital and some of the other facilities. The number of complaints regarding these special police forces is an extremely small percentage of our total.

Our Board is made up of seven individuals. One of my Board members is here with us today -- one of the civilian members, Ms. Edgcomb. The Board has a unique mixture in that five of the members are civilians and two are police officers. One of the police officers is appointed by the Fraternal Order of Police which is the bargaining unit for the rank and file officers in the District of Columbia, and the other is a representative of the Chief of Police. The five civilians are appointed by a combination of the Mayor and the City Council. The Mayor in turn names the chairperson of the Board and that must be an attorney.

The staff of the Board presently is made up of five individuals, an Executive Director, a Staff Assistant and three investigators. In this fiscal year, which just started about one day ago, we do expect to move to nine individuals, increasing our investigative staff and also adding a staff attorney. We found that from the beginning our Board was simply not allotted enough resources to do the job that it had to undertake.

Very briefly, telling you a little about our Board, it is indeed independent of the Police Department. We are a part of the Executive Office of the Mayor, in the Office of Special Services. We average about one complaint per day for a total in 1984 of 342 complaints. The Board, by statute, is required to hold a public hearing on each and

every complaint, except those complaints that are frivolous. That is a major undertaking. The Board began holding hearings in August of 1982 and since that time we have held a total of about 140 hearings. These administrative hearings are carried out by the Board as a whole. Testimony is taken under oath. The hearing is public and both the complainant and the subject police officer have the right to testify, call and examine witnesses and cross-examine adverse witnesses.

The Board finds the complaint "sustained" or "dismissed", based on the preponderance of the evidence. If it sustains the complaint then, by statute, the Board has to make a recommendation to the Chief of Police for personnel action. We do not provide monetary damages or any recommendation in that area. The individual who comes to us can still pursue any civil remedies that might be available. When the Board recommends personnel action to the Chief of Police the Chief then has 30 days in which to either accept the recommendation or reject it. If he rejects the recommendation then the matter goes to the Mayor. The Mayor has a 30 day period in which to either uphold the Board, go along with what the Chief of Police has recommended or order a compromise.

Once the matter has gone through the process the civilian could, I suppose, ultimately go into court and seek some kind of action, but basically the matter stops once the Mayor speaks. Once the punishment or penalty has been carried out the subject police office can do what all government employees can do - appeal to the Office of Employee Appeals. We have a number of cases that are currently in the process of appeal.

We have not had any of our decisions litigated in the courts. The Fraternal Order of Police did present a case to our Public Employees Review Board, challenging the Mayor's authority to uphold a decision of the Civilian Complaint Review Board when the Chief of Police disagreed with it. What we received from that particular body was a clear statement to the union that the Civilian Complaint Review Board Act took precedence over the contract which the union had negotiated with the Mayor and, indeed, it was not an unfair legal practice for the Mayor to, in effect, say to the Chief of Police, "Chief, even though you don't agree with what the Board said, you will in fact carry out the punishment or the discipline that was recommended", because that is what the Mayor had determined was appropriate.

I will not go into the details of our investigative process except to say that our investigative process resembles the Berkeley process very much. When our City Council put together the latest Review Board Act they looked at models around the United States. They looked at what Berkeley does and a lot of what we do looks like what Berkeley does except, I should point out, we are by statute obligated to operate in the sunshine; that is, public records, public information, readily and freely available. We issue investigative reports and they are available to the subject police officer and to the complainant. Also, members of the public could ultimately come in and get those. We have public files that are available. There is some debate with the Corporation Counsel of the U.S. Attorney's Office on which, and what, information ought to be available at various stages.

11. Flint, Ombudsman's Office
(from Werner Petterson's Compendium)

In November 1973, the Flint City Council passed an ordinance establishing the Civilian Complaint Review Board. The next year, four Flint police officers filed suit in the county court challenging the Constitutionality of the ordinance and, on January 7, 1975 the court found for the plaintiffs and permanently enjoined the Board from conducting any further proceedings based upon the existing ordinance. The city council took no action to re-write the ordinance.

In 1974, a new city charter and a new form of government was voted for in Flint; a part of the new government's charter was the "Office of the Ombudsman". The Flint Ombudsman meets the traditional definition of Ombudsman in that it is an independent, politically neutral government office, appointed by a legislative body, and is mandated by a legal document. The Ombudsman is responsible for hearing and responding to complaints from citizens on matters of government and government-provided services. Also, the office has legal authority and power to conduct full investigations, recommend changes in established policies and procedures and publicize findings of investigations and results of recommendations.

The Flint Ombudsman is appointed by a two-thirds majority of the city council; it is a non-renewable seven year term and can only be held once. The Ombudsman may not hold elective office for two years prior to and two years after leaving office and cannot be employed by the city for two years after leaving the position. An Ombudsman may be removed from office only for cause by a vote of seven of the nine city council members.

The Ombudsman has the power to conduct a full investigation, including the power to subpoena witnesses, administer oaths, take testimony, gather evidence and enter and inspect the premises of government offices during regular working hours. The Ombudsman may require the cooperation of department heads and officials during an investigation; however, it has no power to investigate any matter under the jurisdiction of the Civil Service Commission.

If the Ombudsman's investigation reveals a serious misuse of power, the office recommends changes to correct such abuse. If no corrective action is taken, the Ombudsman has the power and authority to publicize, through the public media, the facts of the investigation and results of the recommendations.

Police officers, as well as all city employees, are entitled to legal representation during an interview. When a complaint of abuse of police powers is substantiated the Ombudsman informs the police chief of the investigative results and recommends disciplinary action be taken. The police chief determines the specific discipline.

Prior to the present Ombudsman, the Ombudsmen had been Flint police officers who were out-spoken critics of police abuse in their department.

12. Hartford, Police Investigation Review Board (from Werner Petterson's Compendium)

The Investigative Review Board (IRB) is an administrative body established by the Chief of Police to review findings and make recommendations to the Chief of Police of citizen complaints investigated by the Internal Affairs Division of the Hartford Police Department. Prior to 1982, the IRB was composed of high ranking police officials.

On February 22, 1982, the Hartford Court of Common Council amended the ordinance creating the Hartford Commission on Human Relations to provide authority for the City Manager to appoint three Commissioners to serve on the IRB. An additional amendment has subsequently been passed to provide for the naming of a Commissioner alternate to serve as necessary.

The IRB has seven voting members: 3 high ranking police officials, (one of whom serves as Chairperson), 3 Human Relations Commissioners, and 1 City Manager representative. There are also non-voting members who attended the Board meetings: one Police Department advocate, IAD investigators, police department legal counsel and a police secretary. Complainants are allowed to attend the meetings to provide input and answer questions, but are not allowed to stay through the entire hearing. Police officers against whom the complaints are lodged are not required to attend, nor have they done so voluntarily to date.

Complaints received by the Hartford Police Department are divided into two categories:

> Class A Complaints: abuse of authority, excessive use of force, illegal arrest, deprivation of citizen rights, verbal abuse, racial/ethnic slurs, serious violation of Police Code of Conduct.

Class B Complaints: poor/slow service and/or response, complaints of less serious nature.

Class A complaints are referred to and investigated by IAD and subsequently heard by IRB. All Class B complaints are referred to the appropriate Division Commander for review with findings going to the Police Chief. The IRB's review of Class A complaints can result in the following findings: exonerated, unfounded, non-sustained, partially sustained, sustained, or withdrawn. When the Police Chief decides that there is cause for disciplinary action, the case is submitted to an internal hearing in which the IRB plays no role. The Police Chief is solely responsible for final decision and recommendation for disciplinary action; the complainant is notified of the disposition by letter.

The Human Relations Commission has been advocating a more independent role for its Commissioners by having their own investigators rather than relying upon the police investigation. The Commission has additionally recommended the right of the complainant to have full access to the process, and related information, as well as knowledge of what actual disciplinary action has been taken where cause is found. To date, the City Council and Police Department have not supported either recommendation.

13. Kansas City, Office of Citizen Complaints (from Werner Petterson's Compendium)

The Office of Citizen Complaints (OCC) is an extension of the Board of Police Commissioners which was created by the Missouri Legislature. OCC's mandate is "to protect the citizen from the possibility of abuse or misconduct on the part of police officers and at the same time protect the police officer from unjust and unfair accusations...."

The following complaints are handled by OCC: unnecessary or excessive use of force, abuse of authority, discourtesy, racial or ethnic slurs, missing property, harassment, improper operational procedures, improper conduct, lack of services, and civil rights violation.

OCC receives all citizen complaints and refers them to the police department's Internal Affairs Division for investigation. OCC reviews the citizen's complaint and IAD's investigative report and then sends its written report to the Board of Police Commissioners; also, these reports go to the Police Chief.

A citizen may lodge a complaint at all police facilities and at OCC; the complaints are received in writing, in person, or by telephone and may be anonymous.

IAD has 30 working days to investigate and report on the complaint; OCC has 10 working days to review the complaint and IAD's investigation and then make a determination which is sent to the Board of Police Commissioners. The determination can be: (1) attempt to conciliate the complaint, (2) the complaint is substantiated, (3) unsubstantiated, (4) exonerated, or (5) closed.

At this time, OCC will write a memorandum summarizing the evidence, conclusions and its determination of the appropriate classification. The memorandum is sent to the Board of Police Commissioners which has 15 days to respond; if there is no response, the report is forwarded to the Police Chief. The Board may approve or disapprove the OCC's classification.

> If a Commissioner disagrees with the classification, the Commissioner will so notify the Board Attorney and the Office Director. The Office will then withhold further action pending review and consideration by the Board. The Board Attorney will promptly notify the other Commissioners and will arrange for a meeting of the dissenting Commissioner, the Office staff, Board Attorney, and any other Commissioner who may wish to attend. A determination will be made by the majority of the Commissioners.

If the Police Chief disagrees with the OCC's classification, he is to promptly notify the Board's attorney who will convene a meeting that includes the Board attorney, Police Chief, OCC Director and any Commissioners who wish to attend.

> After a classification has been agreed upon by the Board of Police Commissioners, the Office Director will forward the Office report and a copy of the complaint investigation file to the Chief of Police. Judging each case on its individual merit, the Chief of Police may, at his discretion, direct the respective chain of command to recommend disciplinary action.

The Police Chief makes the final decision on discipline.

14. Miami, Office of Professional Compliance

Joseph Ingraham, Director

The Office of Professional Compliance came into being after a very lengthy study took place, over a two year period in the City of Miami, in reference to having civilian involvement in the internal investigatory process of the Miami Police Department.

The riots of 1980 really expedited that process right along. Subsequently, in July of 1981 via Ordinance 127, the Office of Professional Compliance came into existence, but it was truly in July of 1980 that that happened. On June 8, 1981 I came on board as the Director and the office has been functioning ever since.

The office functions relative to the input of a seven member Advisory Committee which is comprised of four community representatives, one representative of the Fraternal Order of Police, one representative of the Chief of Police and an individual that is appointed by the City Manager. The staffing of the Office of Professional Compliance for the city of Miami is that of five individuals - one Director, three investigators and one clerical person. The training for the staff is rather unique. In addition to other professional experience and academic qualifications, 450 hours of law enforcement familiarization, including weapons familiarization, are mandated for the investigators and the Director. I have found that to be something very interestingly absent in other agencies when I did a national survey, while on the faculty of Georgetown, and thus far I think that has been a saving grace for us.

My office reports directly to the City Manager. I function at his leisure and his pleasure. Thus far I have

functioned under, may I add, the administration of three City Managers. The office to date has received well over 1,200 complaints. On an annual basis we receive approximately 450 to 475 complaints. Only 200 to 250 are actually assigned and that is indicative of the amount of staff. I must add at this point, after four and a half years, finally someone began to listen and just last month I was informed that we will be able to double the size of our staff, adding five more professionals.

The average case size and case load for each of the investigators is approximately 20 to 22 cases. The types of complaints that we receive run the gamut of excessive force, brutality, false arrest and police shootings. Probably one of the more unique yet dangerous aspects of this job is the actual monitoring of riots, disturbances, protest marches, demonstrations etc. that happen quite frequently in Miami. The reason for this, I have felt, and I have found subsequently, is that we are placed in the situation of not having to be really dependent on the after-action reports of law enforcement, relative to what they did. No one has to indicate that to me because we are there to monitor the proceedings as they occur and also to act as mediators, when it is possible, during the course of these different types of activities.

As I indicated, we are an extension of the City Manager's office. We are housed directly within the City of Miami's Police Department. Our responsibility is to monitor ongoing internal investigations as they are conducted by the Police Department, in those areas that I have previously stated. This process is initiated, though not exclusively, by the request of citizens. It can happen reciprocally. They may come in and lodge a complaint directly with our office or they have the option of going directly to the

Police Department's Internal Security Unit and lodging their complaint there.

With or without the request of the citizen, we will initiate an investigation or monitor ongoing investigations. We also have the authority and, on occasion, conduct special investigations, at the request of the City Manager, the Chief of Police or at my discretion, if I find it necessary, relative to omissions in investigations that we may be monitoring.

The office functions out of nine community outreach centres that are spread throughout the municipality. The complaint process is one that I have indicated to you. We contact all complainants to inform them of the outcome of their particular investigation. In those cases in which I disagree with the outcome there is a very simple process. That element of disagreement may start during the course of the investigation. For example, if my staff discovers witnesses or evidence we may deal with the investigators within the department, to indicate omissions to them. Then the process moves up a level to the point of mediation between the Chief and myself. Ultimately the City Manager, by City Charter, has authority over the Chief of Police in that particular type of instance.

Law enforcement, as I have indicated to you this morning, operates at the pinnacle of democracy. It is the most visible aspect of any government. Unfortunately, there is a negative connotation, that sometimes is rightfully so placed, on those elements of police operations that are found to be unsettling to the civilian. But we cannot and should not exclusively hold law enforcement under the guise of oversight. In that regard there is a new direction in the City of Miami. We will be moving to a process whereby all complaints about municipal employees will fall under scrutiny of the Office of Professional Compliance.

15. Milwaukee, Fire and Police Commission

Patrice Hargarten, Commissioner

I am going to go into a little bit of the history of the Milwaukee Fire and Police Commission because we have fairly broad powers. If I speak about the history perhaps you will understand how we came to obtain them.

For those of you who do not know much about Milwaukee, Wisconsin, we are a city of approximately 650,000 people. We cover an area of about 96 square miles. We have approximately 2,050 sworn officers. The Milwaukee Fire and Police Commission was created in 1885 by statute. We are a creature of statute. This summer we celebrated our 100th anniversary of existence. The major impetus for creating the Commission, back in 1885, was to remove the selection process, of Fire Chiefs as well as Police Chiefs, from political influence.

The city had gone through a long period of bouncing ball Police Chiefs. Every time a new Mayor came into office, every four years, he would immediately fire the Police Chief and install his own man. Everyone who had been appointed to the department under the previous administration would immediately resign, figuring they were going to get fired anyway. This didn't work out too well. To curb this abuse the Milwaukee Fire and Police Commission was created.

Aside from being given the power to select Chiefs, they were also given responsibility for the selection and appointment of all members of both the Fire and Police Departments. It is our staff that are responsible for recruitment. We construct and administer all exams and create eligibility lists for both entry level and promotional exams. In addition, non-exempt promotions, which are made by the Chief, are subject to our approval.

In 1911 our empowering statute was amended to give us power to hear citizen complaints. It also gave us the power to hear appeals on disciplinary matters which originate within the Department. For example, with regard to the Police Department, every time a police officer is disciplined by the Chief, by means of imposition of a penalty in excess of a five day suspension without pay, that officer has the right to appeal the Chief's decision to us. That discipline will not take effect unless and until we uphold the Chief's decision after holding a public hearing.

The disciplinary appeal process probably takes up more of our time than does the citizen complaint process. We don't have exact records on it. At least some of the disciplinary appeals probably originate with civilian complaints which were made directly to the Department.

In 1984 our power was again expanded and we now are a truly civilian oversight authority. We have the authority to prescribe general policy for both the Fire and Police Departments and we are responsible for reviewing the efficiency and general good conduct of both Departments. Based upon our policy review we can issue directives to the Chief's of either Department. Those directives must be carried out unless they are overruled by the Mayor within a certain time.

We do a general policy review each year of both Departments. This year, with regard to the Police Department, we are focussing on the expansion of our Crime Prevention Program and also looking to establish an Employee Assistance Program for officers with alcohol, family or drug problems.

The other major change that occurred in 1984 was that we were given the power to promulgate rules directly for the Fire and the Police Departments, although we can delegate rule-making authority to the Chiefs. Since that power came into effect it has been sort of a shared responsibility. It has worked out pretty well. Prior to that we could suspend rules of the Police Department, but it got a little fuzzy as to whether we could promulgate rules to replace the rules that we had just suspended. That was cleared up in 1984.

The Commission itself is composed of five members who are all citizens. We are appointed by the Mayor and we are confirmed by the Common Council. No more than two members may belong to the same political party. We are all part-time, even though we all put in a lot more time than we expected. We serve five-year staggered terms. We have a full-time staff of eleven including two community relations specialists, who are the ones who get involved in our complaint investigations. They both have law enforcement backgrounds. We are funded through the city of Milwaukee budget.

As for citizen complaints, we are an alternative for the citizen. Any aggrieved person can complain directly to the Police District Station. However, there are people who do not want to complain directly to the Police Department for fear of retaliation or whatever. We are an alternative. They can complain directly to the police or to us or they can complain to both.

We have jurisdiction over all complaints, as long as the police officer is employed within the Department and if the facts set forth in the written complaint, if proven true, would be sufficient for discipline of the officer by us. If the charges, as set forth in the written complaint, are

sufficient for removal of the officer, we have the power to immediately suspend that officer prior to any further proceedings on our part, although this power has hardly ever been used.

After a complaint is received, our staff makes a rather limited investigation. It usually involves speaking to the complainant and also speaking to any witnesses, independent or otherwise. Our staff has traditionally not spoken to the accused officer, although we are in the process of revising our procedure and one of the things we are looking at is giving our staff increased authority to get both sides of the story, by talking to the accused officer. We are also considering increasing our pre-trial discovery a little bit.

We have a Rules and Complaints Committee that is responsible for investigating these complaints. If they deem it appropriate, they may notify both the accused officer and the complainant to appear at a Conciliation Conference. This conference is conducted by an Attorney we have on our staff, who also functions as our Hearing Examiner and, on occasion, it has been conducted by a Commissioner. We put great emphasis on and strongly urge people to participate in Conciliation Conferences, particularly in the more minor matters. Often this is the first time the citizen has confronted the police officer since the alleged incident and when you get right down to it, in the more minor matters, sometimes all they are looking for is an explanation by the officer of why he or she did what it was they did or, in some cases, a simple apology for rudeness or what was perceived to be verbal harassment. If the complainant fails to appear at the Conciliation Conference, the Committee on Rules and Complaints may recommend that the Board hearing be dismissed. We do not like to do this unless it is a

borderline case which probably has insufficient cause to go to trial. If the accused officer fails to appear, it is possible that the complaint would simply be set for trial.

If the case cannot be conciliated--of course, there are cases where it is silly to even attempt conciliation--the Committee on Rules and Complaints makes a recommendation to the full Board and the Board holds a majority vote as to whether or not there is sufficient cause to proceed to trial.

If we do go to trial, a panel of three of our five Commissioners sit, in effect, as a jury. We are the fact-finders. We have, again, our staff attorney who operates as our hearing examiner and he applies the rules of evidence, although rather loosely. We try to keep this as informal as possible, however, we do have subpoena power and testimony is given under oath before a Court Reporter. Neither party may call the other adversely. The burden of proof is on the complainant to establish the charges in the written complaint by a preponderance of evidence.

Although we do try to keep it informal, by this time, if it does go to trial, the accused officer is represented by a union attorney and usually the complainant has retained private counsel. If the charges are proven by the complainant we do not get involved in the awarding of money damages at all. We are limited to disciplinary matters. We discipline the officer and we can go from suspension for one day without pay up to 60 days without pay. We can demote and we can also discharge. Our decisions can be appealed to Circuit Court.

I have some statistics as to the number of complaints we receive, although many are resolved informally, over the

phone, by our community relations specialists. In 1984, we had 37 formal complaints. Six were successfully conciliated. Only three of those 37 ultimately did go to trial. As it turned out, last year the police officer was found not guilty in all three of those. In the past we have discharged police officers on civilian complaints. The rest of those complaints were dismissed for various reasons. In several of them, once we got to the conciliation conference the complainant realized that he had identified the wrong officer. Several others were dismissed for insufficient cause to proceed to trial. A great number of them were dismissed due to passivity on the part of the complainant. I am sure you have all experienced the disappearing complainant problem to one extent or another. I went back nine years and we average anywhere between three and nine trials per year. The great majority of cases that actually make it to trial, in fact it was 25 out of the 32, were based on physical abuse. The rest of them were for much more minor matters.

As I mentioned before, we are in the process of currently revising our rules. We are trying to streamline them and make them more understandable for the lay person, so this conference has come at a wonderful time for us and it has been very beneficial for the representatives from Milwaukee.

16. New Orleans, Office of Municipal Investigations (from Werner Petterson's Compendium)

The Office of Municipal Investigations (OMI) was created by City Council ordinance in September 1983 and was placed within the Chief Administrative Officer's domain. This agency was constituted to investigate citizen complaints against all city employees, including police officers.

The ordinance charges OMI with investigating "any alleged misconduct of any City employee, classified or unclassified"; it also defines "misconduct": it "shall include but not be limited to bribery, theft of city property, improper discharge of firearms, coercion and/or the excessive use of physical force by an employee in the conduct of official duties, the performance of a lawful, legal action in an illegal or improper manner, or the violation of a law, rule or regulation which may be considered as reasonable cause for reprimand, suspension or dismissal from public employment."

Citizen complaints, including anonymous ones, are received during OMI's regular working hours, Monday through Friday.

The ordinance requires a 90 day disposition of complaints and it permits parallel investigations by OMI and other City investigating agencies. The investigatory tools employed by OMI are interviews, review of records, normal surveillance activities, polygraph and granting of partial or full immunity from administrative discipline.

The conclusions of the investigative report are sent to the complainant, accused employee, appropriate department head and the Chief Administrator's Office.

New Orlean's OMI has specific procedures for responding to shooting incidents involving City employees:

> The discharge of a firearm by a city employee occurring in Orleans Parish shall be immediately investigated by the OMI without the necessity of a prior complaint as elsewhere provided herein. In all cases of firearms discharges by city employees occurring in Orleans Parish, the Police Department shall notify OMI and OMI shall respond and proceed to the scene of the discharge of firearm incident.

An Advisory Committee is appointed by the Chief Administrative Officer and includes three citizens, Director of Civil Service, and three members of the City Council, who are appointed by the Council President. It makes recommendations about job descriptions and specifications for OMI investigators.

17. New York, Civilian Complaint Review Board (from Werner Petterson's Compendium)

The present Civilian Complaint Review Board (CCRB) in New York City is an example of institutional evolution and adaptability. The first Board was altered by a public referendum which was led by the Patrolmen's Benevolent Association. When the CCRB was reconstituted, the Board members were to be civilian members of the New York City Police Department. The following policy statement is taken from the New York City Charter and speaks to the issue of civilian complaints:

> It is hereby declared to be the public policy of the City of New York in order to preserve the independence and integrity of police service, that civilian complaints against members of the police department of the City of New York shall be investigated and dealt with fully and fairly by the appropriate official regularly charged with the governance and discipline of the police department without interference by any person or group of persons not regularly in police service.

The jurisdiction of CCRB is three-fold: it is authorized to review citizen complaints and recommend disciplinary action to the Commissioner, it is to recommend changes in police rules and policies which have a detrimental effect on police-community relations, it is to recommend changes in police training which would improve police-community relations and help reduce citizen complaints.

The CCRB accepts, investigates* and reviews complaints alleging excessive or unnecessary use of force, abuse of

* In April 1985, Police Commissioner Ward transferred jurisdiction for investigating serious citizen complaints of excessive use of force to the Department's Internal Affairs Division.

authority, discourtesy and racial or ethnic derogatory language or behaviour.

Such complaints can be made anonymously and can be made by phone, mail, or in person, 24 hours a day, seven days a week. Any police precinct station, CCRB office and any police department office can receive the complaint.

The process begins with the complaint being forwarded to the CCRB, investigated by its staff and then given to the Executive Director who makes a recommendation based upon the investigation and sends the recommendation to the Board which makes its recommendation to the Police Commissioner. The Commissioner is the final authority on all disciplinary decisions.

Within its complaint procedure, CCRB has a conciliation mechanism which is used in less serious cases where the allegations cannot be proved and there is no way to substantiate what occurred. It is an opportunity for the parties to discuss their views of what happened with a captain from the Board who acts as a third party to resolve the complaint. The parties do not meet.

The CCRB report to the Police Commissioner will state its disposition of the complaint; (1) substantiated, (2) partially substantiated, (3) unsubstantiated, (4) exonerated, (5) unfounded, and (6) other misconduct detected beyond the original allegations in the complaint.

The CCRB has a large staff of approximately 100 uniformed and civilian members of the police department, with uniformed members responsible for investigating complaints.

18. Oakland, Citizens' Complaint Board

Larry Carroll, Investigator

In Oakland, California, we have a seven member Citizens' Complaint Board. It acts in an advisory capacity to the City Manager with respect to police complaints. The Board was created in April, 1980, in response to the deaths, in 1979, of several minority members of the community.

The Board has jurisdiction to investigate excessive force complaints and also has jurisdiction to investigate non-excessive force complaints, if the complainant files an appeal from the Police Chief's disposition.

Originally, we averaged roughly 100 complaints a year. We are down to about 70 a year now. The Board was created in response to the use of deadly force and, I am pleased to say, there is no problem with the use of deadly force now. Both the Board members and the City of Oakland believe that the Board has been the driving force behind that.

Part of the underlying rationale for the creation of any oversight agency, and particularly in our city, is to accomplish two main goals--to improve police-community relations and, very importantly, to provide a forum for citizens who have complaints against the police. I think our Board has been very effective in both of these aspects.

We do, however, have some problems with our existing process. One concern is with respect to police officer attendance at our Board hearings. It is a peculiar problem because, while we recognize that we have legal authority to compel the attendance of the police officer, in the City of Oakland this has always been approached through negotiation. That is basically where the Mayor and the City Manager and

the Board are at now. They are into negotiations again, to achieve better participation from the police. It is still voluntary. I think it will probably stay that way. It is sort of in the history of the city.

At the present time, our police department is being surveyed because of both complaints from within the department and external complaints. Some police brutality complainants have filed claims in various state and federal courts. The outcomes of these cases may impact upon the police, in the form of direct policy changes, but I do not think the process of the Board itself will change.

Recently, we have not heard too much from the citizens, which can be a good or bad thing. When the bad was happening we did hear from citizens so we believe that, since we do not hear from them now, most citizens are indeed happy with the police performance and are happy, for the most part, with the Citizens' Complaint Board.

Our Board has subpoena power in conjunction with its investigations, including police department records. Hearings are held in public. The burden is on the complainant to prove the allegation by a preponderance of evidence. The Board examines the witnesses and the parties can cross-examine indirectly by submitting questions to the chairperson.

The Board sends a written report to the City Manager who makes the final decision on the complaint. Some members of the community would prefer that the Board have more ultimate power but, as I have indicated, the Board has served its original mandate well, having regard to the very significant decrease in the police use of deadly force in the City of Oakland.

19. Portland, Police Internal Investigations Auditing Committee (from Werner Petterson's Compendium)

In 1980 and 1981, there were two substantial (one resulting in numerous criminal charges) and proven acts of police misconduct by officers of the Police Department, one involved the narcotics detail and the other was a racial incident. Further, the number of civil liability law suits against the city and its police department were increasing. The City Council appointed a thirteen member civilian task force to examine police policies and procedures that governed the investigation of citizen's complaints.

The Task Force on Police Internal Affairs reported that "the process of investigating complaints against the police favors the police officer over the citizen" and the report recommended "regular public involvement in the citizen complaint process... through the appointment of a Citizen Advisory Committee".

Although the Police Chief and Mayor rejected the Task Force recommendation, the City Council passed an ordinance creating a civilian advisory committee. This ordinance established an audit committee composed of City Council members and eight citizens appointed by the City Council. The eight citizens were delegated the responsibility of auditing complaint investigations; thus, the "Police Internal Investigations Auditing Committee" (PIIAC).

The police union opposed the ordinance and instituted a referendum. In spite of an expensive campaign by the police union, the auditing committee was adopted by a majority of voters.

In December 1982, the PIIAC, composed of the nine appointed civilians, one of whom was selected by the Police

Chief, commenced its responsibilities of investigating the police department's internal investigations system.

PIIAC is not a citizen complaint review board that replaces the internal disciplinary process of the Portland Police Department. All complaints are still received and investigated by the police. The City ordinance charged PIIAC with three duties: (1) monitor the police internal investigation mechanism to insure fairness, thoroughness, and timeliness; (2) report on the investigation's findings, conclusions and recommendations; (3) act as an appeal agency for citizen's dissatisfied with the police handling of complaints. In other words, PIIAC does not investigate the citizen's complaint; it audits the procedures used by the police department in investigating complaints against its officers and deciding questions of discipline.

The Committee's tools for accomplishing these auditing tasks include power to compel people to attend and testify at hearings, administer oaths, and to order the production of records for Committee examination. It should be noted that very few police officers have voluntarily appeared to testify and the police department has not fully complied with requests for documents; no subpoenas to the police have been successful. PIIAC does not recommend disciplinary action nor does it comment upon the police chief's disciplinary decisions. It examines the fairness of the police department's internal complaint process, both at the point of an individual complaint and the over-all aggregate of police discipline. The Committee's auditing reports go to the Mayor, the City Council and the Police Chief.

Presently, there is one staff person assisting the twelve Committee members (3 City Council members and 9 citizens) with a yearly budget of $34,000.

20. San Francisco, Office of Citizen Complaints (from Werner Petterson's Compendium)

The Office of the Citizen Complaints (OCC) was created through a City Charter amendment and placed under the jurisdiction of the Police Commission. Such an arrangement established an office that is within the police bureaucracy but independent of the San Francisco Police Department. OCC's Director is appointed by the five Commissioners and is exempt from civil service and cannot be a former police officer or police employee. The Office's budget is separate from the police department's. Presently, OCC is physically located in police headquarters, but there are plans to move it to a more neutral location.

OCC receives all citizen complaints of police abuse and misconduct and categorizes them into the following areas: unnecessary force, unnecessary action, racial slur, or conduct reflecting negatively on the police department. Complaints are received by telephone, letter, or in person; on the average, OCC receives 10 to 20 complaints per day.

OCC screens the incoming complaints in order to eliminate frivolous or misdirected complaints and then assesses the probability of a successful investigation based upon evidence, timing, and witnesses. Those cases assessed as low probability are sent into mediation, counselling, or an exchange of conflicting information to settle the complaint; however, those cases assessed as high probability are sent to OCC's Department of Investigations where civilian investigators carry out an investigation. When a complaint is substantiated OCC forwards its findings and recommended discipline to the Police Chief for action. OCC can conduct a hearing to facilitate fact-finding, such hearings are held at the request of the complainant or the police officer.

The Charter amendment also charges the OCC with the task for making quarterly reports recommending changes in police department policies and procedures.

G. Audience Questions and Comments

Gabrielle Edgcomb (Washington D.C. Civilian Complaint Review Board)

I don't think this is controversial, but in most places that I know anything about the majority of people in prisons are men. It is also true that, historically, law enforcement has been in the hands of men and we don't need to ask why or how come or what. But we have entered a different age, thank goodness. I think on both sides, perhaps. At any rate, the only remark I heard this morning to this issue was from Mr. Masterman, in terms of his own organization, and I was distressed to see the first people on the dais were all men. Now we do have a majority of men in this room. I simply want to say that because of what I have said, in terms of law enforcement as well as law-breaking, women can play an extremely useful and penetrating role in this field. Thank you.

Eileen Luna

Miss Edwards would like to comment on that.

Lucy Edwards

I think the point that she has made is well taken and I don't know whether you are keeping statistics or not, in terms of who the complaints are against, but what we have found is that we do get, of course, a larger number of complaints against the male officers. It may have to do with the fact that most departments also have smaller percentages of female officers, but we have had hearings where we have had to look at the alleged misconduct of both men and women.

Shamsher Singh (Metropolitan Toronto Police Complaints Board)

There has been a lot heard and documentation for what has been said about the perspective of the overview agency. I don't see much in respect of what the concerns of the police are and I believe that's an important aspect to focus on, to get a balanced assessment of the whole problem.

Eileen Luna

That is going to be the subject of one of the workshops this afternoon. But in addition to that, does anyone on the panel have a comment in relation to what the response has been of the police in their particular jurisdiction.

I touched on that in my presentation, as you know, because we were challenged in the court for two years after we were put into effect. In addition to that we were challenged again in 1982. Our experience has been, however, that familiarity dispels fear. That is basically our finding in Berkeley. As police officers become more familiar with the process, as they go through the hearings and they come to understand that we do not simply sustain all complaints (we sustain approximately 50 percent), as they come and explain both what occurred and why they made the decision they did, they come to be more easeful with the situation and come more often, even without representatives. We also have the right for union representation at our hearings and approximately half of the officers come with their representative. The other half come on their own. We also have the experience of police officers showing up in the office and saying "I think you are going to get a complaint about something that just happened and I think I'll let you know about it right off the bat". I usually say "O.K. but remember I need to be able to take this as a

formal statement, so if you want to do that now, we can do that." Does anybody else have any experiences they would like to relate.

Lucy Edwards

I would just like to say that we are currently experiencing a boycott by the Fraternal Order of Police, in terms of their coming to our hearings and representing officers. That was not the case initially. Since our first hearing the union had assigned an attorney and an attorney came with each of the subject police officers to represent them. Of course, we do have subpoena powers and all of the other, well not all of the other, we certainly do not have anything approaching Royal Commission powers, but we do have subpoena powers. In terms of the police officers and the department generally, I think that over the last three years - through many meetings and a long drawn out process - the relationship between the department and the Board has improved.

We will have a Civilian Complaint Review Board. Even though the Department didn't want it and even though the union doesn't want it, we will have it, and I think we are reaping the benefits in that there is a measure of cooperation which is beginning to develop.

Don Casimere (Richmond California Police Commission)

Thank you. My name is Don Casimere. I'm the investigative officer from the Richmond California Police Commission and my question has to do with what you just hit on. For eleven years I was a police officer, a police sergeant at Berkeley, and I was really quite pleased to find out that there were other individuals who have had law enforcement experience here in the room.

My question has to do with the effectiveness or how you view the effectiveness, of investigative personnel or of Commissioners who have previously been police officers. I'd like for you to look at it from two perspectives, (1) the perspective of that investigator or that Commissioner relating with police officers now, as a civilian and (2) the perception of citizens in the field who are now being approached by a civilian Commissioner who has police background. We are concerned here about the police Commissioner or investigator being independent and autonomous.

Joseph Ingraham

I think that your best example in that department is the City of New York. They are here and I am sure that they can articulate that. There has been a lot of resistance there lately in that particular regard. There are some inherent problems with that and we need to be very honest. It is a double-edged point. On the other hand, you cannot function effectively if your Board, Commission or whatever, does not have that particular type of awareness. It is impossible. Therefore, you are going to either have to have people come to you with that type of background or have somebody who can provide them with that type of awareness once they are involved in the process.

Hans Schneider

I approach that subject with some temerity because I can't claim that we have enough experience so that we can talk knowledgeably. On the other hand, we can also, of course, indulge in some flights of fancy to respond to this particular problem, in the case of our system.

First of all, let me say that I have some reservations about the characterization of police versus the rest of the community; the police and the civilians. It gives me a problem. I think that the police are not the army. They may be, of course, a military force but, in fact, they are a civilian organization and to the extent that we can persuade them to manifest more characteristics of a civilian organization, rather than a force which is completely apart, I think we can improve the relationship between the community and the police. We are spending some effort in that respect and, I think, with some success.

As far as our investigators are concerned, they do have a police background and I think that once people are out of the police force for a number of years there is no reason not to hire them. I think that the experience they have gained as police officers stands them in good stead. As far as our Commissioner is concerned, myself, obviously I have absolutely no police experience. I don't think that that - I won't even argue that point. I think that someone with police experience can make just as good or just as bad a Commissioner of a law enforcement review agency as I purport to be. As far as our Board is concerned, there was a deliberate provision within the Act so that each panel that hears complaints will, in fact, have a former police officer on it, in order to represent the police viewpoint. However, there is a qualification to that, in as much as that the police officer who serves on a panel to hear a complaint may not be, or have been in the past, a member of the police force of which the respondent is a member.

Lucy Edwards

I also want to note something on that. Two quick things. Our statute does say that Board members cannot,

within a certain number of months of leaving our Board, go and become a part of the police department. I don't think there is any particular danger of that in terms of our civilian members and, as I said before, we do have two police officers on the Board and that, I think, is very helpful in terms of their discussion and their deliberations and their understanding of what happens within the department.

We have had, as investigators, people who have been former police officers and people who are just at that moment, or at least recently, police officers. We have also had investigators who had experience in the investigative field but were not a part of a police department. I would like to say, and I am sure my Board member here will agree with me, that the investigators who have done the best job for us did not have prior police department experience. As a matter of fact, our best investigator is here with us at the conference and he formerly worked with the public defender's service - Gabe Chikes is back there. The people who were a part of the police department tended to reach back and remember contacts that they had and I have to worry, and I'm sure the Board does too, how many steps are they missing because they can call an old buddy or they don't believe that that complainant, who just walked in the door and said something about someone who was in the Academy with them, has it right. So it is something that you have to be mindful of.

Eileen Luna

In addition to that, I would just like to add that at Berkeley the Commissioners may not be police officers. The investigators may be police officers, although they have not been and are not. I had experience representing public employees and I think that public accountability of public employees, be they any type of public employee, police officers or anything else, is what Berkeley views as the issue. So we do not have police officers on the Commission, although we have a number of Commissioners, as well as myself, who are attorneys with some understanding, a great deal of understanding, about the laws as related to policing. Maybe we can go on to the next question.

Mark Iris (Chicago Police Board)

I would like to address this question to those on the panel who are from the United States. Earlier this year (March, 1985) the U.S. Supreme Court handed down its decision in Louder Mill v. Cleveland Board of Education and this laid down some fairly stringent guidelines which a public agency must follow in suspending or firing an employee. I'm wondering, in the most serious cases which your agencies investigate, what changes, if any, have been made in your procedures to accommodate this recent court decision.

Eileen Luna

I'll respond to that very quickly and then open up to the panel. In Berkeley, we are advisory to the City Manager. We do not discipline. Therefore, it has not been deemed to apply to us at all.

Lucy Edwards

The same thing is true about us. It is the Chief who imposes the discipline and where there is a recommendation that the person be fired, the Chief normally, if he agrees with what the Board has had to say, will send it to the Police Trial Board. We do still have a Police Trial Board and officers do get that additional trial on top of having to come to the Board.

Joseph Ingraham

The Chief of Police, ultimately, has the last word in reference to discipline of the officer. The officer, in the State of Florida, has an appellate process. Internally, there is a Disciplinary Review Board. Then it goes to the Chief. Then, if the officer disagrees with that, he or she can go the the Civil Service Board. The City Manager, ultimately, still has the power to override all of those. Therefore, we have not had a need to change anything.

Arne Peltz (Manitoba Police Commission)

Fifty-fifty (50-50) men and women! Get that on the record! I should say that we have just received a complaint from a white middle-aged businessman about underrepresentation in the future.

I have been interested in the question of the standard of proof, having gone through a number of years of debate, publicly and privately, in preparing our legislation. There is a diversity of systems, although quite a few common elements, to what we have heard so far. Could the panelists comment on the standard of proof which is used either administratively - there must be some standard applied - or

adjudicatively and could you comment, if anyone wishes to, on the notion, which has been expressed, that applying a criminal standard, proof beyond a reasonable doubt, is inappropriate in what is essentially an employment discipline system, and also the comment I have heard from time to time, that that standard makes proving a default extremely difficult.

Eileen Luna

In Berkeley, we have a standard of clear and convincing evidence, which is less than beyond a reasonable doubt and more than a preponderance of the evidence. It's somewhere in the middle. We do not feel that holding to a criminal standard is appropriate at an administrative hearing and that is the standard for administrative hearings in California, so we abide by that - clear and convincing evidence.

Lucy Edwards

Our standard is preponderance of evidence, obviously less than what Eileen has.

Brian McClelland

In Northern Ireland it is beyond a reasonable doubt, which is the criminal standard. Personally, I prefer balance of probabilities, which is the civil form. Beyond a reasonable doubt seems excessive for a disciplinary matter.

John MacBeth

In our disciplinary appeals, in the Province of Ontario, it is somewhat less than the criminal standard but somewhat

more than preponderance. We are very close. It depends on who is sitting on that particular day.

James Henry (Chicago, Office Professional Standards)

My question is to Miss Luna. I want to make sure we have this correct. Is it correct, what you said, you're office has a fifty percent sustained ratio?

Eileen Luna

Of those cases which go to hearing.

James Henry

Ok. Is that yearly or over the lifespan of your office.

Eileen Luna

Well, that has been in the last year and a half, since the middle of 1984. Prior to that it was about 40 or 45 percent. It has gone up to about 50 percent.

James Henry

Do you have any tips on your success ratio?

Eileen Luna

I don't know quite how to answer that. Obviously, there are excellent investigators and excellent Commissioners. Basically, what it comes down to is depth of investigation and being sure that you manage to speak to citizen witnesses as well as the easy witnesses in our city, which tend to be the police officers because they are required to testify to

us. So it takes a little bit more to reach out into the community and find out whatever citizens there are that might have seen something. In addition to that, it is very important to get those citizen witnesses to come to the hearing because if they come to the hearing and they testify as to what they saw and there is the ability to cross-examine, which the Commission has, as well as the parties, it really does help to flesh out that investigation.

Robert Sherman (Boston, Lawyer's Committee for Civil Rights)

I represent victims of racial violence and, as part of that, I litigate police misconduct cases. I just want to shift focus a little bit and ask people for their perceptions about a slightly different issue. I am interested in your views in terms of passage of an ordinance. We are talking about this in Boston with a variety of people, from the city government to community groups. What has been the key element, in your opinion, in terms of support for the passage of civilian oversight legislation? There is, in Boston, I am sure like in many other cities, tremendous opposition from the police unions to any form of oversight -- either municipal oversight of any municipal employee or oversight of the police specifically. I am interested in what has been the key element of support that has been able to drive the passage of those ordinances.

Eileen Luna

In Berkeley it was the breadth of support. Berkeley is a city which is eleven miles square and yet incredibly segregated. It's a university town with large numbers of third world minority people who are in different segments of the city. The whole concept of civilian review was some-

thing which was supported by all segments, including the people who live in the hills as well as the people who live in the flats. Because of that we had the support to get a strong ordinance and to keep it together, but it was that support, by members of the community of all types, which was the basis of our strength.

Hans Schneider

Let me say first of all, in the case of Manitoba, the system was instituted by means of an Act of the Provincial Legislature. It did not require the support of municipal levels of government and I don't think that there was a sustained effort to obtain that support. There was, however, a perception by the majority government of the time -- over the objections of the two opposition parties -- that the measure was needed and that it did have public support and there were, of course, action groups who were advocates, such as the Association of Rights and Liberties and agencies like the Manitoba Police Commission, which was indeed instrumental in formulating the legislation and in seeing it through.

Lucy Edwards

I think that what would help is to stress the idea that there needs to be an independent Board or an independent review, so that it will improve the public perception of the important job that police do for the community and there are a number of community groups who can enhance that. Certainly, typical civil rights organizations. But also, if you can get some of the business community and other groups to see that it is in the best interest of the police department to have this public spotlight shined on them, that would help.

Joseph Ingraham

The attitudes must be taken into consideration. Firstly, it has to come from the community. It has to have community support. Secondly, there has to be strong impetus on the part your elected officials and the third thing is that it has to be a negotiated outcome, meaning that you sit -- your Fraternal Order of Police, your Chief of Police, people round the table -- and say this is going to be how we can make it best serve the general public.

Eileen Luna

I think that the last thing, which has certainly been touched on by everyone, is that it should not be seen as interfering with good policing. That what, in fact, it does is make good policing possible. I think that is what we are all about.

Delegate

I would like Admiral Bell, and perhaps other panel members, to tell me what their procedure would be if a subject officer resigned after a disciplinary charge was laid but before the Board hearing commenced, assuming the charge was serious. There are two questions. Firstly, would the Police Chief accept the resignation if it is apparent that the police officer is trying to evade the process? Secondly, what action would the Board or the review agency take? Would they continue with their proceedings? Would they make a finding? What actually would happen in such a case?

Admiral Bell

If it was a criminal matter the resignation would have no effect at all on the Director of Public Prosecutions' decision. Supposing, shall we say, a police officer had killed someone in the process of an arrest and resigned. If the Director of Public Prosecutions believed there was a criminal charge that would stand up, his resignation would have no effect whatsoever.

On the discipline side, the worst punishment that can be imposed is dismissal or a requirement to resign. If the officer resigns it is up to the Police Authority to decide whether they will accept his resignation. If they do, he is no longer a constable and no longer subject to the police discipline Act. We have had two or three occasions like that. The police officer realized that it is impossible and he just resigned. The complainant is usually very satisfied with that result since there would be no worse punishment given to the officer.

Delegate

Let us say he seeks employment at a police department in a different jurisdiction. That is, he resigned in order to avoid any disciplinary record that might prevent him from being accepted by the other police force. What would occur in that situation?

Admiral Bell

You see, this is where the Police Authority will not allow him to do it. If he is just getting out to evade the process I don't think the Police Authority would accept it.

Diane Martin (Metropolitan Toronto, Citizens Independent Review of Police Activities)

I don't have a question so much as a general closing comment. Without a community involved in the issue of police review the rules, regulations, procedures and methods that each of you use will be meaningless. I have heard a lot about various methods of dealing with the issue. What startled me most of all is that the issue seems to be the same the whole world over. What I hope will come out of the conference is that all of us will recognize that democracy does not survive with rules and regulations; it survives and advances because individual citizens fight for their rights and have responsive institutions dealing with them. As I think one of the panelists said, the best rules and regulations aside, there are still policemen abusing citizens' rights and that is really the bottom line and that is what we are dealing with.

Larry Carroll

The only thing I would like to note is that I think everyone in this audience would probably concur with your comments. I think that is one of our desired objectives. I think all the members of this audience should remind each other that our first membership is in the human race.

Delegate

I have two questions. I am a reporter. Firstly, with respect to those Boards that have some retired police officers on them, is there not a potential absence of arm's-length if members of the Board are former police officers? Another question, to Miss Grant. I find it difficult to reconcile that there will be validity to a complaint and yet there is no reason for trial. Are we mistaking imposition of penalty with finding of guilt?

Wesley Pomeroy

For the Review Board panel, hearing a particular case, three people will be drawn from nine members. As the Registrar of the Review Board I am the person who decides which members are going to make up the panel. If a Board member is retired from the same municipal police force as that of the subject officer, that Board member would certainly not be allowed to hear that case.

Cheryl Grant

A complaint can be substantiated in that the complainant's statement has been supported by the evidence and the action of the police officer may have caused harm to the complainant. But it may have been a policy failure. That is, the police officer's action was not against policy. Therefore, our finding is a policy failure rather than recommending a charge against the police officer.

We have had some improper service and improper procedure cases where the law was more stringent than the policy. The police officer had followed the rules and regulations of the department but the rules and regulations had not kept up with the current state or federal law.

H. Comparative Analysis of Civilian Oversight Agencies

Werner E. Petterson, Conciliator, U.S. Department of Justice, Community Relations Service

In September 1984, a conference, "Civilian Oversight of American Police" was held in Chicago, Illinois and it became the place of origin for the International Association for Civilian Oversight of Law Enforcement. As conference key-note speaker, Dr. Hubert G. Locke, Dean, University of Washington, spoke of the historical and political roots of civilian oversight and quoted James Madison:

> "You must first enable the government to control the governed; and in the next place oblige it to control itself."

Dr. Locke suggested that civilian oversight agencies are examples of the implementation of Madison's second maxim, government's obligation to control itself.

This obligation has been met in different ways; therefore, there are fundamental variances in form and substance from one civilian oversight agency to another. Each local government has fashioned an agency which respects the political and administrative realities of that given community. This pragmatic fashioning makes it virtually impossible to advocate an exemplary model which can be imposed on any community.

In spite of these differences, there are three basic forms of civilian oversight: (1) complaint auditing, (2) internal police review and (3) external police review. Each form is defined by, when and where civilians are involved in the complaint processing. Within each of these forms, there are substantive variations in how and what these agencies can do.

Civilian oversight agencies which function as auditing mechanisms can be seen in Portland, Atlanta, Hartford, Minneapolis and Dallas. These agencies receive complaints after the police department has completed the complaint procedure. The police department's internal affairs unit would have assessed the merits of the complaint, may or may not have conducted an investigation, recommended a disposition of the complaint to departmental commanders, and the police executive would have decided the issue of discipline. In this form of civilian oversight, the civilian has no role in receiving, assessing, investigating, or adjudicating the complaint.

This type of civilian oversight involves citizens in an examination of the police department's fairness and thoroughness in handling complaints. The citizens will draw conclusions from their examination and recommend improvements in police policies and procedures which may have to do with the internal complaint system, or with police-community relations. The primary focus on complaints is prospective, rather than retrospective.

Auditing citizen complaints has been instituted through the action of local police chiefs, such as in Minneapolis and Hartford; in these instances, the police chief's action was catalyzed by the city's political leadership. In Portland, the agency was created by the City Council and, in Atlanta, the civilian oversight agency was instituted by Mayoral decree.

The second form of civilian oversight involves civilians within the police department structure. Chicago and New York City Police Departments employ civilians to process complaints. Such forms of civilian involvement have attempted to improve the credibility of police information

by involving citizens in its development. These forms of civilian oversight provide the police executive with direct information about complaints against police officers. These agencies respect the command structure, but they are directly related to the Police Superintendent or to the Police Commissioner. Since internal review mechanism are the instruments of the police executives, they are vulnerable to their discretionary powers.

The external police review form has been selected by a number of cities as their way of involving civilians in processing complaints. The cities of Cincinnati, New Orleans, Berkeley, San Francisco, Dade County, Flint, Detroit and Toronto have instituted such external review agencies.

Within this particular form, there are variations in structure. Cincinnati and New Orleans have employed Offices of Municipal Investigations which are staffed by paid civilian employees, who investigate all government employees and who report to their respective City Managers. Flint has chosen the Ombudsman form of redressing citizen complaints. Detroit has a volunteer Board of citizens who are supported by a staff of administrators and investigators. Berkeley has chosen a Commission form of external review which is staff supported. Toronto has an external review procedure which is headed by a Commissioner who is supported by a staff of administrators and investigators.

Since the authority for an external review agency emanates from outside of the police department, it is assumed that these agencies are the strongest form of civilian oversight. this assumption is basically true; however, their independent strength has created problems of functional effectiveness due to police resistance. In the

last analysis, their effectiveness if determined by the extent of support from political and administrative leadership.

A comparison of civilian oversight agencies can be made by focusing on the variations in a particular function; for instance, an examination of the conduct of a complaint investigation exposes the variety.

The role of civilians in investigating citizen complaints has four basic variations; (1) no investigative role, (2) the investigation of specific complaints, (3) an investigative role at an appellate level, or (4) a parallel investigation role with sworn police officers.

The civilian oversight agencies in Kansas City, Portland, Hartford, Atlanta, Baltimore, Minneapolis and Dallas do not have civilian investigators. These agencies serve in an advisory capacity to their respective Mayors, City Councils, or Police Commissioners. The civilian role is to review the investigative reports prepared by the police department's internal affairs unit and then submit their review to the appropriate authority.

Among these agencies, with no civilian investigators, there are differences in the purpose of the advice. In Baltimore, Hartford and Kansas City, the civilian review comes before the police executive renders a decision on the complaint; their advice, in effect, is an adjudication of the complaint. Therefore, the advice may carry the weight of recommending the appropriate disciplinary action. The word "may" must be stressed because the police executive is, in reality, the final judge of the complaint and discipline. Whereas, in Portland, Minneapolis and Dallas, the civilian's advice comes after the investigation and the disciplinary decision.

The second variation is civilian agencies that perform the investigative function. Chicago, Detroit, Cincinnati, Oakland, New Orleans, San Francisco, Washington, D.C., Berkeley and Flint have the responsibility of conducting the investigation. They have their own staff of civilian investigators; some agencies, such as Detroit, have both civilian and police investigators on the Board's staff. Their investigations result in an adjudication of complaints through a process by which the agency's administrator reviews the investigative reports and based upon the findings renders a judgment as to whether the complaint is sustained, unfounded, or the police officer is exonerated. In some cases, as in Chicago, the police department's supervisors have an opportunity to comment on the findings before the adjudication is rendered. The investigation and adjudication are forwarded to the police executive for the final disciplinary decision. If the police executive disagrees with the investigation or the adjudication, there is a means of resolving the differences which is typically an appeal to the next ranking government official: Mayor, City Manager, or Police Commissioner.

Some civilian oversight agencies assume the investigative role upon the appeal of the results of the police department's investigative findings. In most cases, the complainant is dissatisfied with the results of the investigation and appeals to the civilian review agency for a second opinion. This third form of civilian investigation is employed in Toronto and Dade County.

A parallel investigation conducted by civilians who accompany police department investigators is the fourth approach to citizen involvement in investigating complaints. Miami's Office of Professional Compliance is the only agency whose civilian staff joins police investigators in

interviews. New Orleans permits parallel, but separate investigations by the Office of Municipal Investigations and the New Orleans Police Department.

COMPARATIVE CHART

	Chicago	Detroit	Cincinnati	Flint	Berkeley	Oakland	Dade County	D.C.	Portland	Miami	New Orleans	Toronto
How was oversight agency instituted?												
a. police order	X											
b. charter		X		X								
c. ordinance			X		X	X	X	X	X	X	X	X
d. mayor's order												
e. city council												
f. police commission												
To whom does agency executive report?												Attorney General Solicitor General
a. mayor		X						X				
b. police chief	X											
c. city council				X	X	X	X		X			
d. commission												
e. city manager			X		X	X				X	X	
Who are complaints against?												
a. police only	X	X			X	X		X	X	X		X
b. police & other employees			X	X			X				X	
Is agency internal or external to police department?												
a. internal	X											
b. external		X	X	X	X	X	X	X	X	X	X	X

	Chicago	Detroit	Cin-cinnati	Flint	Berkeley	Oak-land	Dade County	D.C.	Port-land	Miami	New Orleans	Toronto
Who appoints Board Members?												Attorney General Solicitor General
a. mayor		X				X		X				
b. city council				X	X			X	X			X
c. police chief	x											
d. police commission												X
e. county council							X					
f. city manager			X							X	X	
g. police union												X
What is composition of agency, including Board?												
a. civilians only	X		X	X	X	X			X	X	X	X
b. civilians and police		X					X	X				
Does the Board hold hearings?												
a. YES	CPB X	X			X			X				X
b. NO	OPS X		X	X		X	X		X	X	X	

	Chicago	Detroit	Cin-cinnati	Flint	Berkeley	Oak-land	Dade County	D.C.	Port-land	Miami	New Orleans	Toronto
Does the Board have subpoena power?												
a. YES		X		X	X			X				X
b. NO	X		X			X	X		X	X	X	
What are the Board's powers?												
a. advisory only									X			
b. advisory and recommendation	X	X	X	X	X	X	X	X		X	X	X
Can the Board implement discipline?												
a. YES												X
b. NO	X	X	X	X	X	X	X	X	X	X	X	
Who formally investigates citizen complaints?												
a. police only									X			
b. civilians only												
c. police and civilians	X	X	X	X	X	X	X	X		X	X	X

SUMMARY

These agencies exemplify the diversity and similarity of civilian oversight. There is no one model; each community has designed its agency to accomplish certain objectives within given community realities.

For most, their origins stem from police-community tensions and particularly from conflicts around incidents of police use of deadly force and the subsequent dissatisfaction with the existing avenues for redressing grievances against police officers.

Civilian oversight has been instituted by city, county and state governments; they have been enacted through changes in the government's charter, passage of legislation, or executive order. Such agencies are responsible to police chiefs, mayors, city councils, city managers, county commissions, or state/provincial commissions or cabinet ministers.

Almost all agencies have investigatory powers which are employed at the initial filing of the complaint or upon appeal of an initial investigation which is usually conducted by police department investigators. Agencies, with investigators, vary in entry employment standards for their investigative staff; some enter as recruits with little or no investigative background and other agencies require years of investigative experience. The agencies are equally divided among those who use only civilian investigators or civilian and police investigators.

Except for Toronto, civilian oversight agencies are limited to advising and/or recommending disciplinary action.

In USA communities, it appears to be an accepted practice that final disciplinary decisions rest with the police executive; however, in Toronto, the Police Complaints Board (now called the Board of Inquiry) may determine the specific discipline.

Virtually all of the oversight agencies operate outside of police departments; therefore, they have met stiff resistance from the police community. From the police executives to rank-and-file police officers, there have been concerted efforts to frustrate civilian oversight effectiveness through bureaucratic gamesmanship and legal challenges. Nevertheless, as time and experience have helped build legitimacy for some agencies, workable compromises have been negotiated among oversight administrators, city executives, police executives and police union representatives.

In spite of police resistance and vacillating support from city executives, these agencies are surviving and have become an institutionalized function of government; this fact indicates that these civilian oversight agencies should have a longer history than their predecessors of the 1960's and 70's.

APPENDICES

APPENDICES

A. IACOLE Information

1. General Information

The International Association for Civilian Oversight of Law Enforcement (IACOLE) formed its roots at a conference held at the University of Illinois at Chicago, entitled "Civilian Oversight of American Police". Both civilians and police officers attended that conference in September, 1984, to share information and exchange ideas about the investigation and review of public complaints concerning law enforcement.

At that time a nine member Steering Committee was established to create an international association. The Steering Committee held meetings in September, 1984 and February, 1985 and four sub-committees worked for twelve months to establish organizational objectives, by-laws, membership criteria and a first International Conference, held in Toronto, Ontario, October 1-4, 1985. At that time the by-laws of the organization were passed and the first Executive Committee was elected.

In general, the purpose of IACOLE is to develop an international forum for all those persons who either work directly in the field of civilian oversight of law enforcement or are interested in the subject. IACOLE will seek to develop mechanisms that will enhance police-community relations and encourage law enforcement agencies to respond with sensitivity to public complaints. It is hoped that IACOLE will act as a clearing-house for literature in this area and provide technical assistance and education for those jurisdictions interested in developing various forms of civilian oversight of law enforcement.

Membership in IACOLE is defined as follows:

ARTICLE IV - MEMBERSHIP

A. Categories of Membership
Membership shall be divided into two categories: Members and Associate Members.

1. Members should be defined as those persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative or executive authority to investigate and/or review complaints against law enforcement.

Members shall be eligible to vote at Association meetings and to serve as officers.

2. Associate Members are defined as any person interested in the oversight of law enforcement.

Associate members shall be able to participate in all association activities but are ineligible to vote or serve as officers.

Both Members and Associate Members shall be required to pay the dues set for that level of membership in order to retain that membership. Membership dues for Members are $100.00 per annum, while Associate Members dues are $50.00. Dues are to be paid in U.S. currency.

IACOLE will be holding its second annual conference in Miami, Florida, from December 1 to December 5, 1986.

2. Original Steering Committee

Chairperson:

Joseph A. Ingraham
Director, Office of Professional Complaince, Miami

Co-Chairperson:

Stephen B. Ginsberg
Director, Office of the Public Complaints Commissioner, Metropolitan Toronto

Members:

William Atkins
Assistant to Director, Dade County Community Action Agency, Florida

David Fogel
Director, Office of Professional Standards, Chicago

Sandy Herman
Staff Assistant, Police External Investigations Auditing Committee, Portland

Eileen Luna
Director, Police Review Commission, Berkeley

Wesley Pomeroy
Director, Metro Dade Independent Review Panel, Dade County, Florida

Leonce C. Rhodes
Community Relations Specialist, Fire and Police Commission, Milwaukee

Percival P.B. Sealy
Professor, Criminal Justice, Bishop College, Dallas

3. Minutes of First Executive Committee Meeting

INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT
OF LAW ENFORCEMENT

MINUTES OF THE EXECUTIVE COMMITTEE MEETING

OCTOBER 4, 1985

The first meeting of the Executive Committee of the International Association for Civilian Oversight of Law Enforcement (IACOLE) was convened by Mr. Wesley Pomeroy, newly elected Chairperson. This meeting immediately followed the election of the Executive Committee at the Toronto Conference of IACOLE which was held October 1 - 4, 1986 at the Park Plaza Hotel. The following Committee members were present: Wesley Pomeroy, Chairperson: Joseph Ingraham, Vice Chairperson; Werner Petterson, Secretary; Cheryl Grant, Treasurer and six at-large members; Leonce Rhodes, Lucy Edwards, Andrew Cunningham, Clare Lewis, Donald Casimere and Eric Freeman.

Mr. Pomeroy announced his intention to create six subcommittees: By-Laws, Ethics, Conference Site Selection, Publications and Clearinghouse, Finance and Membership. The subcommittee appointments will be reflective of the internationl character of IACOLE and will include Associate Members.

Mr. Casimere volunteered to initiate the development of an Association newsletter; Mr. Pomeroy recommended that an editorial board be formed by Mr. Casimere to govern the newsletter and it should have international representation.

The Executive Committee discussed the need for an interim meeting before the December 1986 IACOLE Conference in Miami and approved a March 1986 meeting in Chicago, Illinois, USA.

The Executive Committee authorized the Treasurer, Ms. Grant to take whatever steps necessary to open a chequing account for IACOLE and she was given carte blanche in distributing funds for the purposes of the Association. It was agreed that the Treasurer and Secretary would be co-signatories for the account.

It was agreed that the process for receiving membership fees would be for the fees to be sent to the Secretary for recording and then forwarded to the Treasurer for deposit.

Mr. Pomeroy discussed the workings of the Finance Committee which would be chaired by the Treasurer; he suggested that the Finance Committee have two functions: (1) collect and distribute funds and (2) pursue an outreach program for developing financial resources.

It was also decided that the Secretary and Treasurer would develop an IACOLE membership card that would be given to members upon receipt of their Association fees.

The Executive Committee authorized the Chairperson to design and purchase stationery for IACOLE.

The Secretary will publish a roster of the Executive Committee that will provide addresses and telephone numbers and it will be mailed to Committee members.

The meeting was adjourned by Mr. Pomeroy.

4. Current Executive Committee (July, 1986)

EXECUTIVE COMMITTEE

Chairperson:	Wesley A.C. Pomeroy Independent Review Panel Dade County, Florida
Vice Chairperson:	Clare E. Lewis Public Complaints Commissioner Toronto, Canada
Secretary:	Werner E. Petterson United States Department of Justice Chicago, Illinois
Treasurer:	Cheryl D. Grant Office of Municipal Investigation Cincinnati, Ohio
Members at Large:	Donald Casimere Police Commission Richmond, California
	Andrew Cunningham Police Complaints Authority Adelaide, South Australia
	Lucy R. Edwards Civilian Complaints Review Board Washington, D.C.
	Eric G. Freeman Parliamentary Commissioner for Administrative Investigations Perth, Western Australia
	Dr. Jacob F. Rang National Ombudsman of the Netherlands The Netherlands
	Leonce C. Rhodes Fire & Police Commission Milwaukee, Wisconsin
	André Tremblay Comité d'examen des plaintes Montréal, Quebec

B. Conference Program

INTERNATIONAL CONFERENCE ON CIVILIAN OVERSIGHT OF LAW ENFORCEMENT
Park Plaza Hotel, Plaza Room
Toronto - Ontario

CONFERENCE AGENDA

Tuesday, October 1st

7:30 to 11:00 p.m.	**Registration & Cocktail Reception hosted by the Public Complaints Commissioner**

Wednesday, October 2nd

8:30 a.m.	**Late Registration**
9:00 a.m.	**Welcome & Opening Remarks** - Honourable Ian Scott, Q.C. Attorney General, Province of Ontario - Chairman Dennis Flynn, Municipality of Metropolitan Toronto - His Worship Mayor Arthur Eggleton, City of Toronto
9:20 a.m.	**Opening Address** - Paul Godfrey, former Chairman, Municipality of Metropolitan Toronto Introduced by: His Honour Judge Phil Givens, former Chairman, Metropolitan Toronto Board of Commissioners of Police
9:30 a.m.	**Keynote Address - Oversight of Law Enforcement: An Australian Model** - George Masterman, Q.C. Ombudsman, New South Wales, Australia Introduced by: Dr. Daniel G. Hill Ombudsman/Ontario

Wednesday, October 2nd (Cont'd)

10:00 a.m. **Variation on a Theme: Different Forms of Civilian Oversight**

- A panel of persons, each of whom administers a different kind of civilian oversight agency

Moderator: Eileen Luna, Director
Berkeley Review Commission

Panelists

Manitoba, Canada, Law Enforcement Review Agency
- Hans Schneider, Commissioner

Miami, Office of Professional Compliance
- Joseph A. Ingraham, Director

Northern Ireland, Police Complaints Board
- Brian G. McClelland, Secretary

Ontario, Canada, Ontario Police Commission
- John MacBeth, Q.C., Vice-Chairman, former Solicitor General, Province of Ontario

Western Australia, Parliamentary Commissioner for Administrative Investigations
- Eric G. Freeman, Ombudsman

Washington, D.C., Civilian Complaint Review Board
- Lucy Edwards, Executive Director

11:15 a.m. **Coffee Break**

11:30 a.m. **Panel Continues**

Wednesday, October 2nd (Cont'd)

12:30 p.m. **Lunch - hosted by the Ministry of the Solicitor General, Province of Ontario**

Introductory Remarks:
Honourable Ken Keyes,
Solicitor General, Province of Ontario

Guest Speaker:
Dr. Jacob Rang,
Ombudsman, The Netherlands

2:00 p.m. **Workshop Discussions**

Common Issues Affecting Civilian Oversight: Nuts & Bolts

- Conference participants may choose from the following workshop topics:

French Room

1. Obtaining Information - investigative techniques

Facilitators:
Staff Inspector John Ball,
Metropolitan Toronto Police Force
Edward Singleton, Director of Investigations, Office of the Public Complaints Commissioner

Reception Room

2. Protecting Information - witnesses' and police officers' rights

Facilitator:
Leonard Benefico, Supervisor of Investigations, Office of Professional Standards, Chicago

University Room

3. Police-Community Relations - the role of the complaints process

Facilitators:
Julio Fanjul, Compliance Representative, Office of Professional Compliance, Miami
Harold Levy, Special Advisor, Law Reform Commission of Canada

Wednesday, October 2nd (Cont'd)

Rosewood Room	**4. Measuring Success - statistics and research** Facilitators: Dr. Ann Cavoukian, former Director of Research, Ministry of the Attorney General, Province of Ontario Susan James, Researcher, Office of the Public Complaints Commissioner, Toronto
Dominion Room	**5. Independence - how do you know if a complaints agency is independent? How significant is independence?** Facilitator: Werner Petterson, Conciliator, United States Department of Justice, Community Relations Service
4:15 p.m.	**Buses leave for tour of Toronto and arrival at new City Hall**
5:00 p.m.	**Reception hosted by His Worship Mayor Eggleton**
6:15 p.m.	**Buses leave to continue tour of Toronto**
7:15 p.m.	**Buses return to Park Plaza Hotel**
9:30 p.m. to midnight	**Hospitality Suite Open** **Park Plaza Hotel, Reception Room**

Thursday, October 3rd

9:00 a.m. **Introductory Remarks**

9:15 a.m. **Keynote Address - Police Community Relations**

- Clarence Dickson, Chief of Police, Miami, Florida

Introduced by: Jack Marks, Chief of Police, Municipality of Metropolitan Toronto

9:45 a.m. **Panel Discussion: Standards of Policing**

What the community wants vs. what the law allows.

Should law enforcement officers be condoned if they use extra-legal means to achieve community objectives? (e.g. street gangs, prostitution, drug traffic)

Moderator: Wesley Pomeroy, Director, Metro Dade Independent Review Panel, former Chief of Police, Berkeley, California

Panelists

- Dr. Egon Bittner, Brandeis University Waltham, Massachusetts
- Ramsey Clark, Attorney, New York City (former United States Attorney General)
- William Geller, Attorney, American Bar Foundation, Chicago
- Alan Grant, Professor of Law, Osgoode Hall Law School, Toronto (former Chief Inspector with the London (U.K.) Metropolitan Police)

10:45 a.m. **Coffee Break**

11:00 a.m. **Panel Continues, Open Forum Discussion**

Thursday, October 3rd (Cont'd)

12:00 p.m. **Morning session ends. (Conference participants are on their own for lunch)**

2:00 p.m. **Keynote Address - Oversight of Law Enforcement in Sweden**

- Mr. Justice Ulf Lundvik, former Parliamentary Ombudsmen, Sweden

Introduced by: Clare Westcott, Chairman, Metropolitan Toronto Board of Commissioners of Police

2:30 p.m. **Variation on the Theme** (Cont'd): **Different Forms of Civilian Oversight**

Moderator: Larry Carroll, Citizens' Complaint Board of Oakland, California

Panelists

Chicago, Office of Professional Standards
- David Fogel, Director

Cincinnati, Office of Municipal Investigation
- Cheryl Grant, Chief Investigator

England and Wales, Police Complaints Authority
- Rear Admiral J.A. Bell, C.B. Deputy Chairman (Discipline)

Metro Dade County, Independent Review Panel
- Wesley Pomeroy, Director

Milwaukee, Fire and Police Commission
- Patrice Hargarten, Vice Chairperson

Nova Scotia, Canada, Police Commission
- Admiral Harry Porter, Chairman

Toronto, Office of the Public Complaints Commissioner
- Stephen B. Ginsberg, Director

Thursday, October 3rd (Cont'd)

4:30 p.m.	**Closing Remarks** (evaluation forms) Directions re: election for executives of the International Association for Civilian Oversight of Law Enforcement (IACOLE)
5:00 p.m.	**Buses leave for Legislative Building, Queen's Park, Toronto**
5:30 p.m. to 7:00 p.m.	**Official Photograph on steps of Legislative Building, Queen's Park, Toronto, followed by Reception hosted by Honourable Ian Scott, Q.C. Attorney General**
7:00 p.m.	**Shuttle bus service available to return to Park Plaza Hotel**
9:00 p.m. to midnight	**Hospitality Suite Open Park Plaza Hotel, Reception Room**

Friday, October 4th:

9:00 a.m.	**Business Meeting, IACOLE** (All conference delegates welcome to attend) - Adoption of by-laws - Election for executive positions - Site of 2nd annual conference
2:00 to 4:00 p.m.	**IACOLE Executive Meeting**

C. Conference Delegates and Speakers

ADESSKY, Mr. Irving L., Q.C.
Mayor, Ville de Hampstead
5569 Ch. Queen Mary
Hampstead, Quebec
H3X 1W5

ADKIN, Mr. James
Staff Inspector
Windsor Police Force
P.O. Box 60
Windsor, Ontario
N9A 6J5

AMOS, Lieutenant Ken
Portland Police Bureau
1111 Southwest 2nd
Portland, Oregon 97204

ANANICH, Mr. James D.
Ombudsman
City of Flint
225 East 5th Street
Suite 301
Flint, Michigan 48503

ARMSTRONG, Mr. Aaron
Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

BALL, Staff Inspector John
Metropolitan Toronto Police
Public Complaints Investigation Bureau
3080 Yonge Street
Toronto, Ontario
M4N 3N1

BALMER, Ms. Judy
Citizen Complaints Monitor
Calgary Police Commission
316 - 7th Avenue S.E.
Calgary, Alberta
T2G 0J2

BAZOWSKI, Mr. Peter
Acting Ombudsman
Office of the Ombudsman
8 Bastion Square
Victoria, British Columbia
V8W 1H9

BEAMISH, Mr. William
British Columbia Police Commission
2588 Cadboro Bay Road
Victoria, British Columbia
V8R 5J2

BEGIN, Mr. Serge
Montreal Urban Community
750 Bonsecours, Room 491
Montreal, Quebec
H2Y 3C7

BELL, Rear Admiral J.A., C.B.
Deputy Chairman (Discipline)
Police Complaints Authority
10 Great George Street
London, SW1P 3AE
England

BELLAMY, Mr. Bernard G.
Police Officer (Retired)
Student of Police Science
10 Maywood Park
Scarborough, Ontario
M1K 2G8

BENEFICO, Mr. Leonard F.
Supervisor of Investigations
Office of Professional Standards
Chicago Police Department
1121 S. State Street, Room 105
Chicago, Illinois 60605

BERNSTINE, Rev. Orenzia
Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

BERUBE, Mr. Joseph
Ombudsman
P.O. Box 6000
Fredericton, New Brunswick
E3B 2E3

BITTNER, Dr. Egon
Sociology Department
Brandeis University
Waltham, Massachusetts 02154

BLANK, Mr. John
Equal Justice Specialist
Metropolitan Human Relations Commission
1120 SW 5th
Room 520
Portland, Oregon 97210

BRIDGMAN, Staff Sergeant Martin
Metropolitan Toronto Police
Public Complaints Investigation Bureau
3080 Yonge Street
Toronto, Ontario
M4N 3N1

BROMBACHER, Mr. Elton
Chairperson, Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

BROWN, Mr. James
Superior Court
Humble County
1441 Buhne
Eureka, California 95501

BUCHANAN, Mr. Darryl
Senior Investigator
Office of the Ombudsman
City of Flint
225 East 5th Street
Suite 301
Flint, Michigan 48503

BUTLER, Mr. John
Chairman
Edmonton Police Commission
2698 Scotia Place
10060 Jasper Avenue
Edmonton, Alberta
T5J 3R8

CAMPBELL, Mr. Archie, Q.C.
Deputy Attorney General
Ministry of the Attorney General
18 King Street East
18th Floor
Toronto, Ontario
M5C 1C5

CAMPBELL, Mr. Brian
Superintendent, Internal Affairs Branch
R.C.M. Police
250 Tremblay Road
Pickering Bldg.
Ottawa, Ontario
K1A 0R2

CARROLL, Mr. Larry
Senior Complaint Investigator
Citizens' Complaint Board
Room 414, City Hall
1 City Hall Plaza
Oakland, California 94612

CARSON, Mrs. Kathy
Deputy Ombudsman
Office of the Ombudsman
City of Flint
225 East 5th Street
Suite 301
Flint, Michigan 48503

CASIMERE, Mr. Donald L.
Police Commission Investigative Officer
City of Richmond
P.O. Box 4046
Richmond, California 94804

CAVOUKIAN, Dr. Ann
Former Director of Research
Ministry of the Attorney General
18 King Street East
Toronto, Ontario
M5C 1C5

CHAPMAN, Mrs. Janice
Task Force on Police Community Relations
Monroe Co. (N.Y.)
Human Relations Commission
7 Andony Lane
Rochester, New York 14624

CHIKES, Ms. Gabriel
District of Columbia
Civilian Complaint Review Board
Old Landsburg Building
420 Seventh Street N.W.
Washington, D.C. 20004

CLARK, Mr. Ramsey
c/o Clark, Wulf and Levine
113 University Place
New York, New York 10003

COLE, Mr. Arthur L.
Metropolitan Toronto Police Complaints Board
296 Bessborough Drive
Toronto, Ontario
M4G 3L1

COUSINEAU, Mr. Kenneth S.
Executive Director
Municipal Police Authorities
88 University Avenue
Suite 900
Toronto, Ontario
M5J 1T6

CRAMPTON, Staff/Sgt. Robert
Metropolitan Toronto Police
590 Jarvis Street
Toronto, Ontario
M4Y 2J5

CRONKHITE, Mr. R.M.
Deputy Chief of Police
Fredericton Police Department
311 Queen Street
Fredericton, New Brunswick
E3B 1B1

CUNNINGHAM, Mr. Andrew
Police Complaints Authority
G.P.O. Box 2636
Adelaide, South Australia 5001

DECAUSSIN, Mrs. Annette
Investigator
Office of the Ombudsman
City of Flint
225 East 5th Street
Suite 301
Flint, Michigan 48503

DICKSON, Mr. Clarence
Chief of Police
Miami Police Department
400 N.W. 2nd Avenue
Miami, Florida 33101

DRINKWALTER, Mr. W.D., Q.C.
Director
Ontario Police College
P.O. Box 1190
Aylmer, Ontario
N5H 2T2

EDER, Mr. Thomas
Chief Investigator
Detroit Board of Police Commissioners
1300 Beaubien Street, Room 328
Detroit, Michigan 48221

EDGCOMB, Ms. Gabrielle S.
Civilian Complaint Review Board
2039 New Hampshire Avenue N.W.
Washington, D.C. 20009

EDWARDS, Ms. Lucy
Executive Director
District of Columbia
Civilian Complaint Review Board
Old Landsburg Building
420 Seventh Street N.W.
Washington, D.C. 20004

EGGLETON, His Worship Mayor Arthur
Mayor's Office
2nd Floor, City Hall
Toronto, Ontario
M5H 2N2

ERVIN, Ms. Shirley A.
Representative
City of Miami
Office of Professional Compliance
400 NW 2nd Avenue, Room 406
Miami, Florida 33101

EVANS, Ms. Barbara J.
Investigator
Office of Professional Standards
City of Chicago
Department of Police
1121 South State, Room 105
Chicago, Illinois 60605

EWART, Mr. Douglas J.
Director
Policy Development Division
18th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

FANJUL, Mr. Julio A.
Representative
City of Miami
Office of Professional Compliance
400 NW 2nd Avenue, Room 406
Miami, Florida 33101

FERGUSON, Staff Sergeant Hugh
Metropolitan Toronto Police
590 Jarvis Street
Toronto, Ontario
M4Y 2J5

FERNQVIST, Mr. Dan
Head of Section
The Parliamentary Ombudsman (Sweden)
Box 16 327, S-103 26
Stockholm, Sweden

FERRIS, Mr. Charles
Office of the Ombudsman
P.O. Box 6000
Fredericton, New Brunswick
E3B 5H1

FLETCHER, Mr. J.
Independent Review Panel
Metro-Dade
Dade County Courthouse
Room 1902
73 West Flagler Street
Miami, Florida 33130

FLYNN, Chairman Dennis
Municipality of Metropolitan Toronto
Office of the Chairman
City Hall, 2nd Floor
Toronto, Ontario
M5H 2N1

FOGEL, Mr. David
Director
Office of Professional Standards
City of Chicago
Department of Police
1121 South State, Room 105
Chicago, Illinois 60605

FRANCIS, Mr. Arnold A., Q.C.
Messrs. Richards, Francis & Francis
Law Office
Warner Building
Hamilton 5,
Bermuda

FREEMAN, Mr. Eric G., LL.B.
Parliamentary Commissioner for Administrative Investigations (Ombudsman)
18th Floor, St. Martin's Tower
44 St. George's Terrace
Perth, Western Australia 6000

GELLER, Mr. William A.
American Bar Foundation
750 North Lakeshore Drive
Chicago, Illinois 60611

GIDADO, Mr. Alhaji A.M.
Secretary Public Complaints Commission - Nigeria
Federal Secretariat Complex
Block C, 1st Floor
P.M.B. 68
Garki Abuja
Nigeria

GINSBERG, Mr. Stephen B.
Director of Administrative and Legal Services
Office of the Public Complaints Commissioner
157 Bloor Street West
Toronto, Ontario
M5S 1P7

GIVENS, His Honour Judge Phil
76 Caribou Road
Toronto, Ontario
M5N 2A8

GODFREY, Mr. Paul
Publisher
Toronto Sun
333 King Street East
Toronto, Ontario
M5A 3X5

GOSSELIN, Mr. Roger
Juge et Président de la Commission de Police du Québec
Commission de Police du Québec
2050 Boulevard St.-Cyrille Ouest
Sainte-Foy, Québec
G1V 2K8

GRANT, Mr. Alan
Professor of Law
Osgoode Hall Law School
York University
4700 Keele Street
Downsview, Ontario
M3J 1P3

GRANT, Ms. Cheryl
Chief Investigator
City of Cincinnati
Office of Municipal Investigation
801 Plum Street
Cincinnati, Ohio 45202

GROSMAN, Mr. Brian A., Q.C.
Metropolitan Toronto Police Complaints Board
20 Queen Street West
Box 14, Suite 1400
Toronto, Ontario
M5H 2V3

HAMELIN, Mr. Michel
Chairman
Public Security Commission
Montreal Urban Community
750 Bonsecours, Room 491
Montreal, Quebec
H2Y 3C7

HAMPSON, Mr. Gordon
Policy Development Officer
Ontario Police Commission
25 Grosvenor Street
9th Floor
Toronto, Ontario
M7A 2H3

HANDY-SHAW, Ms. Chie
Deputy Executive Secretary
Detroit Board of Police
Commissioners
1300 Beaubien Street, Room 328
Detroit, Michigan 48221

HARDING, Mr. W.I. James
Chief of Police
Halton Regional Police Force
P.O. Box 2700
1229 White Oaks Blvd.
Oakville, Ontario
L6J 5C7

HARGARTEN, Ms. Patrice M.
Attorney, Vice Chairperson
Milwaukee Fire and Police
Commission
Room 706, Police Admin. Bldg.
749 West State Street
Milwaukee, Wisconsin 53233

HARRIS, Mr. Lester
Lieutenant Colonel
Kansas City, Missouri Police
Department
1125 Locust
Kansas City, Missouri 64106

HENRY, Mr. James A.
Investigator
Office of Professional Standards
Chicago Police Department
1121 South State, Room 105
Chicago, Illinois 60605

HERMAN, Ms. Sandy
Staff Assistant
Police Internal Investigations
Auditing Committee
1220 S.W. 5th, Room 115
Portland, Oregon 97204

HILL, Dr. Daniel G.
Ombudsman/Ontario
125 Queen's Park
Toronto, Ontario
M5S 2C7

INGRAHAM, Mr. Joseph A.
Director
City of Miami
Office of Professional Compliance
400 N.W. Second Avenue, Room 406
Miami, Florida 31101

IRIS, Mr. Mark
Executive Director
Police Board
1121 South State Street, Room 603
Chicago, Illinois 60605

IRLANDO, Ms. Arlene
Berkeley Police Review Commission
2121 McKinley Avenue
Berkeley, California 94703

JAMES, Ms. Susan
Researcher
Office of the Public Complaints
Commissioner
157 Bloor Street West
Toronto, Ontario
M5S 1P7

JOHNSTONE, Mr. David C.
Assistant to the Manager
Ville de Hampstead
5569 Ch. Queen Mary
Hampstead, Quebec
H3X 1W5

KEYES, The Honourable Ken
Solicitor General
Province of Ontario
11th Floor, 25 Grosvenor Street
Toronto, Ontario
M7A 1Y6

KILBURN, Mr. Carman J.N.
Commissioner
New Brunswick Police Commission
98 Prospect Street
Fredericton, New Brunswick
E3B 2T8

LAFRANCE, Mr. Guy
Legal Advisor
Monteal Urban Community
750 Bonsecours
Room 491
Montreal, Quebec
H2Y 3C7

LAIDLAW, Mr. Kent
Inspector
Halton Regional Police Force
Box 2700
1229 White Oaks Blvd.
Oakville, Ontario
L6J 5C7

LANGSTON, Ms. Melinda
Chief Management Analyst
Office of the Mayor
City of Atlanta
68 Mitchell Street, S.W.
Atlanta, Georgia 30335

LAVERTY, Mr. R.J.R.
Assistant Secretary and
Executive
Police Authority for Northern
Ireland
5th Floor, River House
48 High Street
Belfast BT1 2DR
Northern Ireland

LEVY, Mr. Harold
Staff Advisor
Law Reform Commission of Canada
130 Albert Street
Ottawa, Ontario
K1A 0L6

LINDEN, Mr. Sidney B., Q.C.
Commissioner
Office of the Public Complaints
Commissioner
157 Bloor Street West
Toronto, Ontario
M5S 1P7

LOMBARDO, Ms. Ann
Office of Professional Standards
City of Chicago
Department of Police
1121 South State
Chicago, Illinois 60605

LUNA, Ms. Eileen M.
Police Review Commission
2121 McKinley Avenue
Berkeley, California 94704

LUND, Mr. Norman
Superintendent
Calgary Police Service
316 - 7th Avenue S.E.
Calgary, Alberta
T2Q 0J2

LUNDVIK, Judge Ulf
Larsbodavägen 74
S123 41 Farsta
Sweden

MACAULAY, Ms. Bonnie
Ombudsman
15 East Fourth Street, Suite 208
Dayton, Ohio 45402

MACBETH, Mr. John, Q.C.
Vice-Chairman
Ontario Police Commission
25 Grosvenor Street, 9th Floor
Toronto, Ontario
M7A 2H3

MANUS, Mr. Alvin
Police Internal Investigations
Auditing Committee
1220 S.W. 5th, Room 115
Portland, Oregon 97204

MARKS, Chief Jack
Chief of Police
Municipality of Metropolitan
Toronto
590 Jarvis Street
Toronto, Ontario
M4Y 2J5

MARQUEZ, Mr. John
Vice-Chairman, Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

MARRINAN, Mr. John
General Secretary
Garda Representative Association
Floor 5, Phibsboro Towe
Dublin 7, Ireland

MARSHALL, Chief E.S.
Police Force
Internal Investigations
Adelaide, Australia

MARTIN, Ms. Suzanne
Independent Review Panel
Metro-Dade
Dade County Courthouse
Room 1902
73 West Flagler Street
Miami, Florida 33130

MASTERMAN, Mr. George, Q.C.
Ombudsman
Office of the Ombudsman
14th Floor
175 Pitt Street
Sydney, N.S.W.
Australia 2000

McCLELLAND, Mr. Brian G.
Secretary
Police Complaints Board for
Northern Ireland
Windsor House
9-15 Bedford Street
Belfast, Northern Ireland BT2 7LP

McCLURE, Mr. Edward D.
Community Relations Service
U.S. Department of Justice
89 Broad Street, Room 1116
Boston, Massachusetts 02103

McCORMACK, Deputy Chief William
Metropolitan Toronto Police
590 Jarvis Street
Toronto, Ontario
M4Y 2J5

McCULLER, Mr. James
Executive Director
Action for a Better Community
244 South Plymouth Avenue
ROCHESTER, New York 14608

McGIVNEY, Mr. John
Member, Board of Commissioners
of Police
P.O. Box 60
Windsor, Ontario
N9A 6J5

McLENNON, Mr. Kart Derrick
Metropolitan Toronto Police
Complaints Board
12 Millhouse Crescent
Scarborough, Ontario
M1B 2E4

MCPHAIL, Ms. Sharon
Commissioner
Detroit Board of Police
Commissioners
1300 Beaubein Street, Room 328
Detroit, Michigan 48221

MCVEIGH, Mr. Alan
Principal Officer
Northern Ireland Office
Police Division
Stormont House Annexe
Belfast, Northern Ireland
BT4 3ST

MESLIN, Mrs. Eleanor
Executive Director
Office of the Ontario Ombudsman
125 Queen's Park
Toronto, Ontario
M5S 2C7

MILLAR, Mr. Colin
Deputy Chief of Police
Hamilton-Wentworth Regional Police
P.O. Box 1060, Station A
Hamilton, Ontario
L8N 4C1

MOFFATT, R.G.
D/Commr (Administration)
R.C.M. Police
1200 Alta Vista Drive
Ottawa, Ontario
K1A 0R2

MOHAMMED, Rev. Canon H.
Chief Commissioner
Public Complaints Commission
Federal Secretariat Complex
Block C, 1st Floor
P.M.B. 68
Garki, Abuja
Nigeria

MORRISON-REED, Rev. Mark D.
Monroe County Human Relations
Commission
150 S. Clinton Avenue
Rochester, New York 14604

MOYLE, Rt. Hon. Roland, P.C.
Deputy Chairman (Investigation)
Police Complaints Authority
10 Great George Street
London SW1P 3AE
England

MUNSTER, Mr. Peter
Office of Municipal Investigation
2400 Canal Street
Room 401
New Orleans, Louisiana 70119

NEUMANN, Mr. Osha
Berkeley Police Review Commission
2121 McKinley Avenue
Berkeley, California 94703

PAGTAKHAN, Dr. Reynaldo D.
Children's Hospital
University of Manitoba
6 Sandee Bay
Winnipeg, Manitoba
R2M 1Z1

PARKER, Mr. Roland M., Q.C.
Deputy Metropolitan Toronto
Solicitor & General Counsel
Corporation of Municipality
of Metropolitan Toronto
1 Dundas Street West
22nd Floor
Toronto, Ontario
M5G 1Z3

PEARS, Mr. Les
Police Commissioner
Calgary Police Commission
316 - 7th Avenue S.E.
Calgary, Alberta
T2G 0J2

PEDDLE, Mr. Ambrose H.
Parliamentary Commissioner
(Ombudsman)
Office of the Parliamentary
Commissioner
49-55 Elizabeth Avenue
St. Johns, Newfoundland
A1C 5T7

PELTZ, Mr. Arne
Acting Chairman
Manitoba Police Commission
402 - 294 Portage Avenue
Winnipeg, Manitoba
R3C 0B9

PENNICK, Ms. Aurie
Member, Police Board
1121 South State Street
Room 603
Chicago, Illinois 60605

PETERSON, Ms. Ann
Supervisor of Investigations
Office of Professional Standards
1121 South State Street
CHICAGO, Illinois 60605

PETITO, Ms. Susan
Attorney
New York City Police Department
Civilian Complaint Review Board
200 Park Avenue South
New York, New York 10003

PETRINA, Mr. Ron. D.
Director, O.P.P. Association
Ontario Provincial Police
Association
119 Ferris Lane
Barrie, Ontario
L4M 2Y1

PETTERSON, Mr. Werner
Conciliator
U.S. Department of Justice
Community Relations Service
175 West Jackson Boulevard
Suite 1113
Chicago, Illinois 60604

PINARD, Judge Claude
Police Commission of Quebec
1701, Parthenais, Room 6.08
Montreal, Quebec
H2K 3S7

POMEROY, Mr. Wesley
Independent Review Panel
Metro-Dade
Dade County Courthouse
Room 1902
73 West Flagler Street
Miami, Florida 33130

PORTER, Admiral Harry
Chairman
Nova Scotia Police Commission
P.O. Box 1573
Halifax, Nova Scotia
B3J 2Y3

POWERS, Ms. Mary D.
Co-Chairman
Citizens Alert
409 South Dearborn Street
Chicago, Illinois 60605

PRESLEY, Mr. Raymond O.
Police Officer/Lieutenant
Commander
Internal Affairs
Minneapolis Police Department
119 City Hall
Minneapolis, Minnesota 55415

PURCELL, Canon Borden C.
Chairman
Ontario Human Rights Commission
Suite M-1-59A, Macdonald Block
Queen's Park
Toronto, Ontario
M7A 1A2

RANG, Dr. Jacob F.
National Ombudsman of The Netherlands
Office of the National Ombudsman
Stadhoudersplantsoen 2
Postbus 29729
2502 LS The Hague
The Netherlands

RHODES, Mr. Leonce C.
Community Relations Specialist
City of Milwaukee Fire and Police Commission
Room 706, 749 West State Street
Milwaukee, Wisconsin 53233

RITCHIE, Mr. John M., Q.C.
Director, Legal Branch
Ministry of the Solicitor General
11th Floor
25 Grosvenor Street
Toronto, Ontario
M7A 1Y6

ROGERS, Ms. Ruby A.
Investigator
Office of Professional Standards
Chicago Police Department
1121 South State Street, Room 105
Chicago, Illinois 60605

SAMSEL, Mr. William
Berkeley Police Review Commission
2121 McKinley Avenue
Berkeley, California 94703

SAN FELIPPO, Mr. Ronald
Commissioner
City of Milwaukee Fire and Police Commission
749 West State Street, Room 706
Milwaukee, Wisconsin 53233

SCHNEIDER, Mr. Hans
Commissioner
Law Enforcement Review Agency
12th Floor
Woodsworth Building
405 Broadway Avenue
Winnipeg, Manitoba
R3C 3L6

SCHOBER, Mr. Frank J.
Director
Office of Citizens Complaints
San Francisco Police Department
850 Bryant Street, Room 565
San Francisco, California 94103

SCOTT, Honourable Ian, Q.C.
Attorney General
Province of Ontario
18 King Street East
18th Floor
Toronto, Ontario
M5C 1C5

SEALY, Mr. Percival P.
Assistant Professor
Bishop College
Criminal Justice Department
P.O. Box 165
Dallas, Texas 75241

SEARLES, Edsworth M., Q.C.
Metropolitan Toronto Police Complaints Board
Suite 221, 510 Yonge Street
Toronto, Ontario
M4Y 1Y4

SHAPIRO, Mr. Harold L.
Commissioner
Detroit Board of Police Commissioners
1300 Beaubien Street, Room 328
Detroit, Michigan 48221

SHENDE, Mr. Neville D., Q.C.
Deputy Director, Legal Services
Department of Attorney-General for Province of Manitoba
6th Floor - 405 Broadway
Winnipeg, Manitoba
R3C 3L6

SHERMAN, Mr. Robert
Lawyers' Committee for Civil Rights under Law of the Boston Bar Association
294 Washington Street
Boston, Massachusetts 02108

SHIELS, Mr. T.J., LL.B.
Vice Chairman
Police Authority for Northern Ireland
5th Floor, River House
48 High Street
Belfast BT1 2DR
Northern Ireland

SHORE, Mr. Murray H.
Barrister
40 Hayden Street
Toronto, Ontario
M4Y 1V8

SINDICICH, Mrs. Irene
Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

SINGH, Mr. Shamsher
Metropolitan Toronto Police Complaints Board
10 Parkway Forest Drive
Suite 705
Willowdale, Ontario
M2J 1L3

SINGLETON, Mr. Edward R.
Director of Investigations
Office of the Public Complaints Commissioner
157 Bloor Street West
Toronto, Ontario
M5S 1P7

SMITH, Mr. Frederick
Supervisor of Investigations
Office of Professional Standards
1121 South State Street
Chicago, Illinois 60605

STIEBER, Ms. Carolyn
University Ombudsman & Associate Professor, Political Science
Michigan State University
101 Linton Hall
East Lansing, Michigan 48824

SULLIVAN, Mr. Frank, C.E.B.
Solicitor and Board Member
Police Complaints Board for Northern Ireland
Windsor House
9-15 Bedford Street
Belfast, Northern Ireland
BT2 7LP

SWEATT, Mr. Willie
Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

SZABO, Mr. Fred S.
Project Manager/Investigative Standards Section
City of Cleveland
Department of Public Safety
601 Lakeside Avenue
Room 230
Cleveland, Ohio 44114

TAKACH, Mr. John, Q.C.
Deputy Solicitor General
Ministry of the Solicitor General
11th Floor
25 Grosvenor Street
Toronto, Ontario
M7A 1Y6

TAYLOR, Mr. Wm. McC.
Secretary and Chief Executive
Police Authority for Northern Ireland
5th Floor, River House
48 High Street
Belfast BT1 2DR
Northern Ireland

TERRILL, Mr. Richard J.
Professor
Wayne State University
Department of Criminal Justice
Detroit, Michigan 48202

TETREAULT, Mr. Odson
Executive Secretary
Detroit Board of Police Commissioners
1300 Beaubien Street
Room 328
Detroit, Michigan 48221

TICKELL, Mr. David A.
Saskatchewan Ombudsman
2310 Scarth Street
Regina, Saskatchewan
S4P 3V7

TRACHSEL, Mr. Walter E.
President, O.P.P. Association
Ontario Provincial Police Association
119 Ferris Lane
Barrie, Ontario
L4M 2Y1

TREMBLAY, Dr. André
President
Comité d'examen des plaintes
Communauté urbaine de Montréal
425 est, rue Sherbrooke
suite 014
Montréal, Québec
H2L 1J9

TUCKER, Mr. Benjamin
Assistant Director
New York City Police Department
Civilian Complaint Review Board
200 Park Avenue South
New York, New York 10003

TURNER, Mr. E.
Police Authority for Northern Ireland
5th Floor, River House
48 High Street
Belfast BT1 2DR
Northern Ireland

UBALE, Dr. Bhausaheb
Commissioner for Race Relations
Ontario Human Rights Commission
Ministry of Labour
400 University Avenue
11th Floor
Toronto, Ontario
M7A 1T7

VAN BERKEL, Mr. Gerard J.C.
Legal Advisor
Office of the Privacy Commissioner of Canada
112 Kent Street, Ste. 140
Ottawa, Ontario
K1A 1H3

VAUGHN, Mrs. Barbara
Ombudsman
City of Charleston
116 Meeting Street
Charleston, South Carolina 29401

VIGILANTE, Lieutenant Gordon
Rochester Police Department
Internal Investigation Section
Civic Centre Plaza
Rochester, New York 14614

WAINBERG, Mr. Mark
Citizens Independent Review of Police Activities (C.I.R.P.A.)
149 Gerrard Street East
Toronto, Ontario
M5A 2E4

WALTON, Mr. Willie
Director, Office of Citizen Complaints
Kansas City, Missouri Police Department
1125 Locust
Kansas City, Missouri 64106

WARREN, Mr. Atkins W.
National Administration of Justice Specialist
U.S. Department of Justice
Community Relations Service
5550 Friendship Blvd.
Chevy Chase, Maryland 20815

WATSON, Mr. John
Police Commissioner
City of Richmond
P.O. Box 4046
Richmond, California 94804

WEILER, Mr. R.
Assistant Ombudsman
Office of the Ombudsman
City of Flint
225 East 5th Street
Suite 301
Flint, Michigan 48503

WESTCOTT, Mr. Clare
Chairman
Metropolitan Toronto Board of Commissioners of Police
590 Jarvis Street
Toronto, Ontario
M4Y 2J5

WIGELIUS, Mr. Anders
Parliamentary Ombudsman
The Parliamentary Ombudsman (Sweden)
Box 16 327, S-103 26
Stockholm, Sweden

WILLIAMS, Mr. John
Police Commissioner
Kansas City, Missouri Police Department
1125 Locust
Kansas City, Missouri 64106

WILLIAMS, Mr. Roy Levy
Chairperson
Detroit Board of Police Commissioners
1300 Beaubien Street, Room 328
Detroit, Michigan 48221

ZACKS, Mr. Michael
General Counsel
Office of the Ontario Ombudsman
125 Queen's Park
Toronto, Ontario
M5S 2C7

Trinidad and Tobago Police Service
Police Headquarters
St. Vincent Street
Port of Spain
Republic of Trinidad and Tobago